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MERCY, JUSTICE, AND POLITICS: JOHN PAUL II ON CAPITAL PUNISHMENT

by

Kevin E. Miller, B.S., M.A.

A Dissertation submitted to the Faculty of the Graduate School,
Marquette University,
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the Degree of Doctor of Philosophy

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ABSTRACT
MERCY, JUSTICE, AND POLITICS: JOHN PAUL II
ON CAPITAL PUNISHMENT

Kevin E. Miller, B.S., M.A.

Marquette University, 2011

Pope John Paul II's 1995 *Evangelium Vitae* teaches that capital punishment ought not be used "except ... when it would not be possible otherwise to defend society." Several interpretations of this teaching have been proposed. Through a close reading of the encyclical in itself, in light of John Paul's other writings on the human person and morality, especially the 1980 *Dives in Misericordia,* and also in the context of such important influences upon him as Thomas Aquinas and Henri de Lubac, I dispute, on the one hand, the interpretation according to which John Paul is pointing toward possible acceptance of the view that capital punishment is, as intentional killing, intrinsically evil. This interpretation rests upon a reading of Aquinas that fails to see the valid logic of his limited defense of capital punishment, and on a reading of John Paul that exaggerates his departure from Aquinas. I also reject, on the other hand, the interpretation of John Paul's teaching as a purely prudential judgment about what is best only in the circumstance of an unhealthy moral culture. This interpretation is incompatible with the logic of *Evangelium Vitae,* which concerns what is necessary both to build and then also to maintain a healthy culture, and is further disproved by demonstrating at length that John Paul's teaching appeals to mercy as a moral principle always essential for full respect for human dignity insofar as this includes the capacity for conversion, and for the realization of true justice by human persons by nature "restless" apart from a supernatural relationship with God. This appeal is grounded primarily in Christian revelation, but the beginning of an appreciation of the value of mercy is also accessible through natural-law reasoning, based especially on our recognition of creation as already pure gift, requiring us to give ourselves to others in love beyond justice.

To my wife Kim, with love and gratitude

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Kevin E. Miller, B.S., M.A.

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The encouragement and support of my department chair at Franciscan University of Steubenville, Fr. Daniel Pattee, T.O.R., regarding my application for a sabbatical for the 2010–11 academic year, was essential in enabling me to complete this project. Kathleen Donohue, Loretta Gossett, and Kristy White of our library staff have been generous with their help in accessing necessary materials. Our Theology Department secretary Sharon Mathieu also provided special assistance during my time away from the Franciscan University campus.

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Prof. Gerard Bradley of Notre Dame invited me to take part in a small symposium on Catholic teaching on capital punishment in 2002, at which Dr. Germain Grisez, Dr. John Finnis, and various members of their school of moral thought, including Bradley, Dr. E. Christian Brugger, and my Franciscan colleague Dr. Patrick Lee were among those present. The conversations there helped me to develop my understanding of their argument.

My mother and father, Kathleen and the late Kenneth Miller, supported me in many ways during my many years as a full-time student and beyond.

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Works by Thomas Aquinas

SCG	*Summa Contra Gentiles*
STh	*Summa Theologiae*

Works by Henri de Lubac

AMT	*Augustinianism and Modern Theology*
ASC	*At the Service of the Church*
Cath.	*Catholicism*
MS	*The Mystery of the Supernatural*

Works by Karol Wojtyła/John Paul II

CA	*Centesimus Annus*
DM	*Dives in Misericordia*
EV	*Evangelium Vitae*
HC	"Homily of the Holy Father: Mass in St. Peter's Square for the Canonization of Sr. Mary Faustina Kowalska"
LR	*Love and Responsibility*
MI	*Memory and Identity*
RF	*Radiation of Fatherhood*
RH	*Redemptor Hominis*

TOB	*Man and Woman He Created Them: A Theology of the Body*
VS	*Veritatis Splendor*

Other Catholic Church Documents

CCC	Libreria Editrice Vaticana, *Catechism of the Catholic Church,* 2nd ed.
CSD	Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*
CV	Benedict XVI, *Caritas in Veritate*
DCE	Benedict XVI, *Deus Caritas Est*
GS	Vatican II, *Gaudium et Spes*

PREFACE

This dissertation brings together several major interests that I developed over a period of many years. Probably from the moment that I learned at a fairly young age that capital punishment (still) exists in the United States and elsewhere, I wondered whether it is right or wrong. My position on the issue swung back and forth during my early adulthood. When Pope John Paul II's *Evangelium Vitae* was released, a couple of years into my time as a theology graduate student, I had come to think that the use of capital punishment for grave crimes was probably morally acceptable and perhaps even preferable. But I was still not entirely comfortable with this view; I defended it when the topic came up in conversations, but I was by no means an activist. Upon reading John Paul's teaching that capital punishment ought, for the most part, not be used, I very quickly realized that this was the view with which my conscience could be at peace, even though it would take me much further study and thought to grasp the basis for this view (assuming that I have now successfully grasped at least some of that basis).

At some point during my high-school years, I came upon St. Thomas Aquinas' *Summa Theologiae,* and having been told that in this book he proves the existence of God, I found and read that portion. As I was also coming to wonder, during that time a few years before the Cold War ended, about the morality of war, I also looked for and read Aquinas' treatment of this topic. Later, probably in college, I became aware that Aquinas argues that there is something called 'natural law,' and I became interested in what he means by this. Such experiences as these led me to seek opportunities to study Aquinas' thought more closely and carefully.

Also during my college years, I learned that John Paul II was, and had long been, a very prolific author. Various friends and acquaintances encouraged me to read his work, which I found (and still find) both challenging and stimulating. When I began to study John Paul's moral thought in particular, I saw connections between Aquinas' thought and John Paul's. I likewise began to develop an interest in the contemporary discussions of such topics within fundamental moral thought as action theory and natural-law theory.

When I was a college senior, Henri Cardinal de Lubac's interpretation of Aquinas on the topic of the relationship between nature and grace was brought to my attention, and then began my efforts at understanding what de Lubac means and whether he is right. Learning about the "Communio" school of thought, and the journal *Communio,* to both of which de Lubac contributed prominently, led me to the writings of David L. Schindler, which in turn alerted me to the relationship between de Lubac's thought and John Paul's, and to the importance of that relationship for an interpretation of other elements of John Paul's fundamental moral thought (besides, e.g., natural law), and of his applied moral and social thought.

In the course of my study of John Paul's teaching on capital punishment, I came to see this teaching as a very significant intersection between his thought, Aquinas', and de Lubac's; as a key manifestation of some central elements of his fundamental moral thought; as well as, of course, as a teaching of practical importance in our society.

During the writing of this dissertation, I became a member of the Dominican Laity. I have often asked that my work would be helped by the intercession of my various Dominican patrons, as well as of John Paul II since his death. To borrow from several of the mottos of the Order of Preachers, I pray that in my study of John Paul's thought, I will

have successfully contemplated and handed on the fruits of contemplation, for the service of truth, to praise, to bless, and to preach. To borrow from John Paul himself, I pray that I will have helped to proclaim the Gospel of life, for the building of a culture of life and love.

INTRODUCTION

To the extent that Pope John Paul II's 1995 encyclical *Evangelium Vitae* can be characterized as being about particular practical moral issues, it is obviously especially about the issues of abortion and euthanasia. Its mentions of capital punishment are comparatively few and brief. Most notably, John Paul spends several paragraphs offering a brief analysis of the problem, stating a conclusion that society "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 quoting the original (1992) *Catechism of the Catholic Church* in support of his position.[1] Elsewhere in the encyclical, we find a likely allusion to the issue in the course of a reflection on the story of Cain and Abel;[2] a statement that the movement against the death penalty is a sign of hope in our culture;[3] and an explanation that the Old Testament provisions for capital punishment do not yet reflect a fully refined sense of the value of life.[4]

From the day the encyclical was released, however, its apparent rejection of capital punishment for nearly all practical purposes received considerable ecclesiastical and popular attention along with its categorical rejection of abortion. Then-Cardinal Joseph Ratzinger, Prefect of the Congregation for the Doctrine of the Faith, highlighted John Paul's treatment of the issue at the March 30, 1995, press conference releasing the

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1. EV 56.

2. EV 9.

3. EV 27. For an influential American anti–capital punishment text, see Bedeau, ed., *The Death Penalty in America.*

4. EV 40.

encyclical, calling it "a real development" and "important doctrinal progress."[5] The *New York Times'*s main article on the encyclical's release had as its subhead: "In Strongest Terms, [Pope] Assails Abortion and Capital Punishment."[6] An accompanying article quoted some critics as well as some supporters of the teaching on abortion, but only supporters of the teaching on capital punishment. The article included this: "Among those welcoming the encyclical as 'one of the most important' statements of John Paul II's papacy was Joseph Cardinal Bernardin of Chicago, who ... developed the theme of the 'consistent ethic of life'—linking abortion with other issues like euthanasia and the death penalty, war and poverty." It continued: "Many Catholic officials and theologians said yesterday that this approach was embodied in the encyclical, although some regretted that the phrase itself was not used."[7]

Catholic leaders in the United States have in the years since continued to refer to *Evangelium Vitae'*s teaching on capital punishment. The United States Conference of Catholic Bishops, in their 2005 statement *A Culture of Life and the Penalty of Death* (the first major Conference statement on capital punishment since 1980), quote *Evangelium Vitae* and in other ways draw from it (for instance, by speaking, as John Paul does, of God's protection of Cain's life).[8] Just this year (2011), both the Illinois Catholic bishops[9]

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5. "On File," *Origins* 24 (1995), 690.

6. Bohlen, "Pope Offers 'Gospel of Life,'" A1.

7. Steinfels, "U.S. Responds on Established Lines," A1, A13. See for background, regarding Bernardin's proposal and the discussion that it generated, Bernardin, "Consistent Ethic of Life," and Pakaluk, "A Cardinal Error."

8. USCCB, *A Culture of Life and the Penalty of Death,* esp. 4, 10–15.

9. Catholic Conference of Illinois, "Abolition of the Death Penalty."

and the Arizona bishops[10] have referred or alluded (by using such language as "culture of life" and "culture of death") to John Paul's encyclical in statements on the death penalty.

This dissertation inquires into the possible theological principle underlying John Paul's rejection of at least most uses of capital punishment, even for those who have committed very grave crimes. The question of whether John Paul has in mind such a principle, and, if so, what it might be, has already received some attention in the scholarly literature as well as in the popular press and in other ecclesiastical statements. Several interpretations of the teaching have been proposed by theologians who have devoted significant study to *Evangelium Vitae* on this topic. On the one hand, some scholars, working within the philosophical/theological framework developed by Germain Grisez and John Finnis, have developed a detailed and formidable argument that John Paul's thought points in the direction of a rejection of capital punishment as intrinsically evil.[11] This detailed argument requires a similarly thorough analysis and response, which I shall offer in chapter 1. I shall argue that the Grisezan reading of *Evangelium Vitae* is mistaken, that there are cogent reasons to regard capital punishment as potentially morally licit in some cases, and that John Paul does not reject these reasons, and even suggests that they remain valid.

Others, in contrast, have contended that John Paul's apparent reservation of capital punishment to a particular and narrow range of cases, those in which there is no other way to prevent someone who has committed grave crimes from endangering society

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10. Arizona Catholic Conference, "Arizona Catholic Conference Bishops' Statement."

11. Bradley, "No Intentional Killing"; Brugger, *Capital Punishment.*

by committing future crimes, is not a matter of principle at all, but rather a prudential judgment regarding what is likely to be most beneficial rather than harmful in societies in which the sense of a real order of justice has been, in one way or another, lost. According to this interpretation, capital punishment might, in other, better cultural contexts, be a good way in which "to defend society" from grave injustice. George Weigel and Avery Dulles have briefly proposed this reading.[12] Steven Long has argued for it at greater length. He contends, in summary, that Aquinas persuasively defends capital punishment as at least permissible even in cases in which a convict can be prevented from committing future crimes. Long further regards any reading of *Evangelium Vitae* that would be at odds with his reading of Aquinas as both theologically (because of the intrinsic value of Aquinas' arguments) and doctrinally (because of their extrinsic weight as witness to the Catholic tradition regarding the meaning and requirements of justice) problematic (as will be noted in chapter 1, John Paul does in fact also regard Aquinas as very important in the Catholic tradition).[13]

This interpretation seems unlikely for several reasons that can be indicated relatively briefly here, though the first few of them will require further elaboration in the subsequent chapters of this dissertation (which will therefore include brief references to Long and the others to indicate where my interpretation especially contrasts with theirs). The first reason is that Aquinas can reasonably be read as offering a significantly narrower defense of capital punishment than Long proposes or than is otherwise generally

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12. Weigel, "*Evangelium Vitae* on Capital Punishment," 224–26; idem, *Witness to Hope,* 758; Dulles, "Catholicism and Capital Punishment," 33, 35.

13. Long, "*Evangelium Vitae*."

assumed. I shall in fact offer an alternative reading of Aquinas in the course of chapter 1, in the context of my explanation of and response to the Grisezan argument. The second, related, reason is that even if John Paul is teaching that there must be a principled rejection of capital punishment except in cases of something like social self-defense, it does not follow that he thinks that capital punishment has nothing to do with a higher order of justice. This, too, will become clear in chapter 1. In short, even if John Paul II is offering a principled rejection of the unnecessary use of capital punishment, this would not mean that his departure from Aquinas is as great as Long thinks it is.

The third reason is that when John Paul introduces his norm[14] regarding capital punishment, he says: "The problem must be viewed in the context of a system of penal justice ever more in line with human dignity." This sounds like a reference to a matter of moral principle. And it provides the context for his enumeration of the purposes of punishment, and his conclusion: "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." There are similar references to "personal dignity," and (as noted above) to "the value of life," elsewhere in the encyclical, in connection with, respectively, mention of God's protection of Cain's life, and of the contrast between the Old Testament provisions for capital punishment and the message of the Sermon on the Mount.[15] Hence, the conclusion that capital punishment ought not be used except when necessary seems to be grounded in

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14. EV 56.

15. EV 9, 40.

moral principle, even though the further statement, "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," is obviously a prudential judgment. Of course, this observation about the reference to "human dignity" raises the question of what specific moral principle John Paul has in mind as necessary, along with justice, for respect for human dignity. To substantiate and explain my contention that John Paul has a moral principle in mind, it will be necessary to answer this question. In a word, I shall contend that John Paul has in mind mercy as necessary for respect for human dignity. Chapter 2 will develop this point by examining closely what *Evangelium Vitae,* read in the context of other writings of John Paul, indicates about the meaning and importance of mercy in relation to human dignity. Chapter 3 will provide further elaboration by considering John Paul's thought regarding the need for mercy even in order to achieve justice.

The fourth reason is John Paul's statement earlier in the encyclical, in the context of a list of "signs of hope" in our culture, also mentioned above: "[T]here is evidence of a *growing public opposition to the death penalty* ... Modern society in fact has the means of effectively suppressing crime by rendering criminals harmless without definitively denying them the chance to reform."[16] This statement is important because Long and others argue that John Paul's use of the expression "to defend society" in his norm does not explicitly limit this "defense" to defense against future crimes by the convicted criminal. The earlier statement, however, about "rendering criminals harmless," does seem clearly to limit capital punishment to cases of that very specific and narrow kind of defense. But is this further limitation a prudential judgment, about what is required in our

16. EV 27.

"culture of death" but would not be required in a healthy "culture of life," that should not be read into or otherwise conflated with the (as I have argued) principled but (as Long and others argue) broader norm? I contend that the attempt to draw such a sharp distinction between what is happening in the two passages is a mistake. Granting (with Long) that John Paul II should be read in the context of the Catholic theological tradition, it is also quite proper to regard his own various texts and passages within texts as mutually illuminating insofar as this is possible.[17]

Furthermore, it is necessary to attend closely to what John Paul is saying when he speaks of the movement against capital punishment as a sign of hope in our culture of death, in order to see whether this really has the character of a prudential judgment. When John Paul speaks of these signs of hope, he has in mind "signs which point to [Christ's] victory," the victory achieved by Christ's shedding of his blood, the victory that "implores mercy," the victory that reveals and makes possible our vocation to make loving gifts of ourselves to others.[18] If the movement to abolish capital punishment is a sign of this victory, then, it would seem, this must be because it is a sign of this love and mercy, which would seem to be a matter of principle.

When John Paul lists the various signs of hope, he begins by including mentions of the following: married couples willing generously and responsibly to accept children as a gift; families willing to help others in need; institutions offering support to mothers in difficulty; groups of volunteers giving hospitality to those alone and in distress; medical scientists and practitioners developing and offering treatments and relief to those in need;

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17. Cf. also Bradley, 162–63.

18. EV 25–26.

movements against laws permitting abortion and euthanasia; and other "*daily gestures of openness, sacrifice and unselfish care.*" He then speaks of opposition to war and to capital punishment. Finally, he adds references to "the growing attention being paid to the *quality of life* and to *ecology,*" and to the development of bioethics.[19] When one looks at all of the "signs of hope" on this list other than opposition to war and capital punishment, one finds references to actions and movements that are clearly good in principle, not only as a prudential matter in the context of a culture of death (even if the more specific forms that some of them, like opposition to abortion, might take will depend on cultural context). John Paul surely does not mean to say that once a culture of life has been achieved, these types of generosity and of protection for human life will no longer be appropriate. It seems unlikely that his mention of opposition to capital punishment (and war) is meant to be so different from his mentions of other "signs of hope," as seems to be presupposed by the claim that while capital punishment might be imprudent in a culture of death, it would become prudent and even necessary in a culture of life.

As further confirmation of this reading of the reference to capital punishment in the "signs of hope" passage, we may compare how John Paul speaks of capital punishment in a later document.[20] In a number headed "The culture of death and a society dominated by the powerful," John Paul writes, quoting the *Catechism* which in turn quotes the norm from *Evangelium Vitae,* concerning "the unnecessary recourse to the death penalty when other 'bloodless means are sufficient to defend human lives against an aggressor and to protect public order and the safety of persons. Today, given the means

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19. EV 26–27.

20. John Paul II, *Ecclesia in America* 63.

at the State's disposal to deal with crime and control those who commit it, ... the cases where it is absolutely necessary to do away with an offender "are now very rare, even non-existent practically."""" The mentions of the need "to defend ... against an aggressor" and "to protect ... the safety of persons" seem rather clearly to be references to the need to render a criminal unable to commit future crimes. While it might be possible to read the latter as referring also to deterrence of others, and to read "to protect public order" as referring also to making manifest the order of justice, these possibilities seem foreclosed by the way in which John Paul here combines these expressions with the reference to "the means at the State's disposal to deal with crime and control those who commit it." Here, then, as in the "signs of hope" passage in *Evangelium Vitae,* John Paul is saying that capital punishment ought not be used unless protection against future crimes by the aggressor requires it. Furthermore, he says that "this model of society"—in which there is "unnecessary recourse to the death penalty," that is, its use apart from the sort of necessity to which John Paul refers—"bears the stamp of the culture of death, and is therefore in opposition to the Gospel message." It is, then, not that the culture of death makes the unnecessary use of the death penalty imprudent. It is, rather, that the unnecessary use of the death penalty contributes to the culture of death.

Fifth and finally, as already noted, Ratzinger referred to John Paul's teaching regarding the death penalty as a "development" and as "doctrinal progress." It is of course possible to have such development beyond and even contradicting Aquinas, especially (though not necessarily only) when (as will, again, be pointed out in chapter 1) the differences between Aquinas' position and the newly developed position are not especially sharp, and when (as will be clarified in chapters 2 and 3) there are grounds

within Aquinas himself (his theology of mercy and his possible theology of nature-grace) for the further development. This is all the more true when one considers that Aquinas, despite his importance, is not the Church's official magisterium (and that the magisterium, while previously affirming a right to use capital punishment, has not denied that there could be even principled limits to that right—and that even the affirmations of the right are not infallible).[21]

This appeal to Ratzinger's statement should be accompanied by mention of a letter that he sent later in 1995 in response to a request for clarification. In the letter, Ratzinger says that John Paul "has not altered the doctrinal principles which pertain to this issue as they are presented in the Catechism, but has simply deepened the application of such principles in the context of present-day historical circumstances," namely, the development of other means of social self-defense. Thus in the preparation of the *editio typica* of the Catechism, there would be "an *aggiornamento* of the text in the light of the papal teaching," but "without any modification of the relevant doctrinal principles," and "consonant ... with the substance of the text as it presently stands."[22] This subsequent clarification might seem to undercut one's ability to use Ratzinger's original statement as part of an argument that *Evangelium Vitae* includes something more than a purely prudential judgment regarding capital punishment.

However, it should be noted that Ratzinger's response refers specifically to development of doctrinal principles beyond those in the original Catechism. It is in fact

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21. See the reviews of the history of Catholic thought/teaching in, e.g., Megivern, *The Death Penalty,* chaps. 1–7; Brugger, *Capital Punishment,* chaps. 3–7.

22. Weigel, "*Evangelium Vitae* on Capital Punishment," 226–27.

not surprising that Ratzinger takes *Evangelium Vitae* to be consistent with those principles, since John Paul concludes his treatment of capital punishment by stating: "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 ...'"[23] Consequently, the modifications made in the preparation of the *editio typica* are not radical. There remains in the revised *Catechism* a reference to the right to use capital punishment. The statements regarding the limits of that right are phrased more strongly than in the original edition, but, as noted by John Paul, such statements were not simply missing from that edition. Finally, the revised *Catechism* adds a quotation of John Paul's statement expressing his prudential judgment that cases of necessity are now rare.[24] Still, Ratzinger's response does not foreclose the possibility that the original *Catechism* already developed earlier doctrinal principles in its statement about the limits of the right to use capital punishment, that John Paul's encyclical makes that development more explicit and authoritative in addition to attempting to clarify its contemporary prudential application, and that Ratzinger's original statement was an affirmation of both of these kinds of "development," principled as well as prudential.

To repeat, chapter 1 will argue that John Paul does not simply reject all capital punishment as intrinsically evil. Chapters 2 and 3 will explain at length that his rejection of capital punishment when unnecessary for public safety is nonetheless grounded in a

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23. EV 56.

24. Cf. the English translation of the original *Catechism*: Libreria Editrice Vaticana, *Catechism of the Catholic Church* (1994) 2266–67, and the revised CCC (1997) 2266–67.

moral principle, namely, the need for mercy as a response to human dignity and as a condition for justice. This however will raise a further question. John Paul's understanding of mercy and its importance is a distinctively theological understanding. He draws from revelation in explaining mercy and its importance. But is the need to reject unnecessary use of capital punishment a truth that is made known only by the implications of revelation, or is it, to at least some significant extent, accessible to reason as well? The importance of this question seems obvious since the decision to reject or to use capital punishment in particular kinds of cases is a decision that must be made by the political community. Even political communities—Western nations, American states—that include many Catholics and/or other Christians are nonetheless generally significantly pluralistic, and for this reason, and for others also, including reasons of principle, it would likely be difficult to persuade such communities as wholes to act solely on the basis of what some Christians take to be revealed truths. Chapter 4 will therefore conclude this dissertation by considering this question. I shall argue that although full appreciation of John Paul's teaching regarding capital punishment requires substantial help from revelation, there are also reasons to think that John Paul would regard the truth of this teaching as something that human reason without revelation can at least begin to grasp. I shall indicate a possible way in which to see natural-law reasoning, especially as understood and employed by John Paul, as pointing in the direction of an embrace of mercy and therefore a rejection of unnecessary use of capital punishment.

In addition to the scholarly treatments of John Paul on capital punishment that I have mentioned thus far, namely, on the one hand the Grisezan interpretation of the teaching as pointing toward rejection of all capital punishment as intrinsically evil, and on

the other hand the interpretation of Long and others that sees the rejection of most uses of capital punishment as something prudentially valuable only in the context of a "culture of death," there is a third treatment, one that is quite close to my own. Thomas Rourke appeals to a distinctively Christian, or more precisely Christological, anthropology, specifically that of Henri de Lubac, to argue in turn for an understanding of the human person as intrinsically open to relation with others in community, and hence as needing to preserve this openness by showing mercy rather than, on the grounds of justice, essentially casting others out of the community.[25] My chapter 3 will also draw from de Lubac, in order to explicate John Paul's contention that justice without mercy ceases even to be justice.

Much of this dissertation is an expansion of several earlier essays that I have written, one focusing primarily on John Paul's theology of mercy and its relation to justice, with de Lubac as background, as a key to understanding John Paul's teaching on capital punishment;[26] another on the relationship between Aquinas' and John Paul's teachings, and more generally on what natural-law reasoning can tell us about capital punishment;[27] and a third on the importance of de Lubac's anthropology for contemporary Catholic social teaching more broadly.[28]

As indicated by the reference above to *Ecclesia in America,* the encyclical *Evangelium Vitae* does not provide John Paul's only treatment of the issue of capital

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25. Rourke, "The Death Penalty."

26. Miller, "The Role of Mercy."

27. Miller, "Capital Punishment."

28. Miller, "The Gift and Mission of Love."

punishment.[29] However, as I have shown, *Evangelium Vitae*'s treatment of the issue has attracted special scholarly and other attention. Furthermore, it is in the encyclical that John Paul most fully indicates the underlying theological basis for his practical conclusion regarding capital punishment, as this dissertation will substantiate. Hence, the treatment in *Evangelium Vitae* is especially worthy of study as a theological project. Finally, papal statements in an encyclical would seem, other things being equal, to be of greater authority than statements in, for example, a post-synodal apostolic exhortation or a homily. Indeed, this too is likely a reason for the attention that the teaching on capital punishment in *Evangelium Vitae* has received. And this too makes the teaching as stated and contextualized in the encyclical especially worthy of a close reading.

This, of course, could raise the question of the level of authority of *Evangelium Vitae'*s teaching on capital punishment. The main source for the contemporary magisterium's self-understanding regarding its levels of authority is the Second Vatican Council's Dogmatic Constitution on the Church;[30] there has been further elaboration in subsequent Congregation for the Doctrine of the Faith documents on the vocation of the theologian[31] and on the Profession of Faith.[32] In summary, there are several ways in which the ordinary or extraordinary magisterium can teach infallibly regarding faith and morals,

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29. See also, e.g., John Paul II, "*Urbi et Orbi* Christmas 1998"; idem, "Homily: St. Louis"; note also John Paul's interventions in more than one American capital case, including that of Darrell Mease in Missouri: NPR, "Murderer Reaps Benefits of Religious Conversion."

30. Vatican II, *Lumen Gentium* 25.

31. CDF, *Donum Veritatis.*

32. CDF, "Doctrinal Commentary."

including regarding matters not formally revealed but connected by historical or logical necessity with revelation. Most notably for a study of *Evangelium Vitae,* this can happen when the pope and all the bishops teach that something is "definitively to be held." Such a teaching is to be received with the assent of faith.[33] The pope can also teach non-infallibly, in which case the teaching is to be received with "religious submission of mind and will," "according to his manifest mind and will," which "may be known either from the character of the documents, from his frequent repetition of the same doctrine, or from his manner of speaking."[34] With regard to "interventions in the prudential order," with their "complexity," "it would be contrary to the truth, if, proceeding from some particular cases, one were to conclude that the Church's Magisterium can be habitually mistaken in its prudential judgments." In any case, there are, according to the CDF, appropriate (and inappropriate) ways in which the theologian can address possible problems with teachings.[35]

How does *Evangelium Vitae* stand in relation to these categories and norms? One must of course recognize first that this encyclical is long and that it treats various issues in various ways; thus, it is necessary to specify the particular passage into the authority of

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33. CDF, "Doctrinal Commentary" 5–9. There has been considerable scholarly controversy regarding the conditions for infallibility, the response to infallible teaching, and the like. See, e.g., the exchange that took place in 1993–94: Sullivan, "The 'Secondary Object' of Infallibility"; Grisez, "The Ordinary Magisterium's Infallibility"; Sullivan, "The Ordinary Magisterium's Infallibility: A Reply"; Grisez, "Response to Francis Sullivan's Reply." Or, a decade later: Welch, "The Infallibility of the Ordinary Universal Magisterium"; Gaillardetz, "The Ordinary Universal Magisterium"; Welch, "Reply to Richard Gaillardetz"; Sullivan, "Reply to Lawrence J. Welch."

34. Vatican II, *Lumen Gentium* 25. For discussion of assent to non-infallible teaching, see Grisez, *Way of the Lord Jesus,* 1:849–54.

35. CDF, *Donum Veritatis* 24–31.

which one is inquiring. The most obviously authoritative passages are those in which John Paul teaches that the intentional killing of the innocent,[36] abortion,[37] and euthanasia[38] are morally evil. Francis Sullivan suggests reasons for regarding these as infallible teachings, and responds to some possible objections to that conclusion, though he himself concludes with a reservation of his own regarding whether there is the theological consensus needed, in his view, to say that it is "clearly established" that the teachings are infallible.[39] The CDF, however, specifically indicates that the teaching on euthanasia is infallible;[40] this would seem to imply that the other two are also.

John Paul's phrasing of his teaching regarding capital punishment would, by contrast, seem not to be such as to indicate an infallible teaching. There is no solemn invocation of papal authority or reference to communion with the Church's bishops. Still, the teaching that capital punishment ought not be used unless there is no other way to protect society would seem to be one that John Paul intends as a fairly weighty exercise of his non-infallible ordinary magisterium. Again, Vatican II's *Lumen Gentium* (echoed by later CDF documents) refers to the need to seek the pope's mind and will "from the character of the documents" in which a teaching is presented. John Paul chooses an encyclical—not the weightiest type of document, but by no means the least weighty either

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36. EV 57.

37. EV 62.

38. EV 65.

39. Sullivan, "The Doctrinal Weight of *Evangelium Vitae,*" esp. 564. See also an expanded version of the article: idem, "Infallible Teaching on Moral Issues?"; also Rausch, "A Response"; Orsy, "A Response to Fr. Sullivan."

40. CDF, "Doctrinal Commentary" 11.

—for his main presentation of his teaching on capital punishment. The Dogmatic Constitution likewise refers to "frequent repetition." John Paul has briefly repeated his teaching on capital punishment on multiple occasions. Finally, *Lumen Gentium* refers to the pope's "manner of speaking." In *Evangelium Vitae,* John Paul introduces his norm regarding capital punishment with the words "It is clear that ..."[41] In this and other ways, in this encyclical and on other occasions, John Paul has presented his teaching with what might be called an emphatic manner of speaking. One can conclude that his "mind and will" are that this teaching should be received with a rather strong (even if not necessarily the strongest possible) "religious assent" (even though this is not yet itself the assent of faith). Even the further prudential judgment that cases of the relevant necessity for the use of capital punishment are extremely rare seems to be one that has some magisterial authority and requires some real deference, if the CDF's instruction regarding magisterial interventions in prudential matters is correct.

As I have noted, from the day that *Evangelium Vitae* was issued, it has been interpreted as reflecting something like the "consistent ethic of life" approach. Even if the teaching on capital punishment does not have as much weight as does the teaching on abortion, the inclusion of both in the encyclical on issues of respect for human life does invite consideration of what connection might exist between these issues. On the one hand, as I have indicated, I shall show in chapter 1 that John Paul does not point in the direction of a rejection of capital punishment as being intrinsically evil as is the intentional killing of the innocent. But on the other hand, as the subsequent chapters will show, when John Paul considers what is necessary in order to establish and maintain a

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41. EV 56.

'culture of life' in which abortion and euthanasia and the like will be rejected (and loving care for all innocent persons will instead be practiced), he finds that—as a matter of theological principle—it is necessary to practice merciful respect for the lives of murderers. On a deep level, then, there is, in John Paul's mind, a need for something that might be called a "consistent ethic of life."

There has now, for more than a century, been a tradition of Catholic concern for 'human rights.' Throughout his encyclical initiating modern Catholic social teaching, Leo XIII speaks of various rights, including but not limited to economic rights.[42] John XXIII's *Pacem in Terris* includes an extended treatment of the topic of human rights.[43] The Second Vatican Council teaches a right to religious freedom.[44] The Pontifical Council for Justice and Peace includes a chapter on "The Human Person and Human Rights" early in its *Compendium of the Social Doctrine of the Church*.[45] *Evangelium Vitae* places itself within this tradition; John Paul II uses the expression "right to life" numerous times in the text, as he speaks very often of "rights" elsewhere as well.[46] At the same time, however, this tradition has not been without Catholic critics from more than one philosophical/ theological perspective.[47] John Paul II himself, in *Evangelium Vitae,* addresses the

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42. Leo XIII, *Rerum Novarum.*

43. John XXIII, *Pacem in Terris* 11–27.

44. Vatican II, *Dignitatis Humanae.*

45. CSD, chap. 3.

46. From the beginning of his pontificate; see e.g. his first encyclical: RH 17. Among later writings, see *Laborem Exercens* 16–23; CA passim.

47. E.g., Fortin, *Human Rights, Virtue, and the Common Good*; Rowland, *Culture and the Thomist Tradition,* 148–57; Lamont, "Conscience, Freedom, Rights," 198–235.

problematic (mis)understanding of "rights" in modern thought and culture.[48] Benedict XVI, in his social encyclical, likewise both uses and criticizes the modern language of rights.[49] It might be suggested that John Paul's treatment of capital punishment in *Evangelium Vitae* is another indication of the limits of the language of rights. On the one hand, there is a 'right to life,' if one understands the word 'rights' correctly (in relation to such other categories as 'justice' or 'duty'); on the other, the word is not sufficient to capture what must be kept in mind in order to show full respect for human life. Those guilty of crimes like murder do not necessarily have a 'right to life' in the same sense as do the innocent; yet their lives must, insofar as this is possible, be respected.

This dissertation, although primarily in the field of theology, is meant to incorporate political science also as an allied discipline. It does not, however, concern itself with such themes as institutions or public opinion—themes taken up by political science understood as a social-scientific discipline (as is perhaps typical). Instead, I am interacting with that subdiscipline that can be called political philosophy. This is the approach to political science that Aristotle seems to have in mind when he links ethics very closely with political science,[50] and of politics as a partnership in the use of *logos* to seek the right and good.[51] This is likewise the approach that such twentieth-century

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48. EV 18–20.

49. CV 43. In addition to John Paul and Benedict, see Glendon, *Rights Talk.*

50. Aristotle, *Nicomachean Ethics* I.ii.

51. Aristotle, *Politics* I.i.

thinkers as Leo Strauss[52] and Eric Voegelin,[53] critics of positivism, have sought to restore to prominence. Hence, this dissertation will explicitly address (although of course far from exhaustively) such underlying questions as the relationship between individual person and political community (in chapter 1) and the respective roles that reason and faith might play in a political community that acts, insofar as possible, in a way that promotes (and does not hinder) human fulfillment (in chapters 2–3 and especially 4), as well as the obvious practical question of whether the political community ought or ought not employ capital punishment. All of these can be regarded as questions that fall within that subdiscipline of political science that is political philosophy.

With political science thus conceived, the possibility of a dialogue between it and theology, as complementary disciplines, should be clear. In one respect, the relationship between the two could be likened to that between philosophical ethics and moral theology. The difficulty with this analogy is that it is not clear that theology, as a discipline that begins with supernatural revelation and faith, will or should have the same role in the life of the political community as such as it can and perhaps should in the life of the individual person or of some other human communities (like family and various voluntary associations). And yet there seems to be a need for dialogue between the disciplines, since a conception of politics that simply rejects such a dialogue would already be a theologically non-neutral conception of politics. The problem might be resolved to some extent if theology itself provided reasons for refraining from imposing

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52. See, e.g., Strauss, *Natural Right and History*; idem, *What Is Political Philosophy?*

53. See, e.g., Voegelin, *The New Science of Politics.*

faith upon politics, and to an even greater extent if reason could already point in the direction of the same requirements for human fulfillment that are more fully indicated by faith. As indicated above, my final chapter will suggest that John Paul rightly thinks that the latter condition in fact obtains.[54]

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54. For further discussion of this problem and of Catholic teaching in relation to it, see Schindler, *Heart of the World,* chap. 1. Also Perry, "Religious Morality and Political Choice," and, in contrast, Griffin, "Good Catholics Should Be Rawlsian Liberals."

CHAPTER I
JUSTICE, CHARITY, AND THE POSSIBILITY OF CAPITAL PUNISHMENT

Importance of Grisezan Critique of Aquinas for Study of John Paul II

The purpose of this chapter is to offer an appropriately thoughtful response to detailed and significant scholarly arguments that John Paul II's moral thought, in *Evangelium Vitae* and elsewhere, points in the direction of a categorical rejection of all intentional killing (killing as an end or as a chosen means)[1] as intrinsically evil, and—for this precise reason—of most or all capital punishment as morally evil; and thereby to prepare the way for a reading, in the subsequent chapters, of John Paul as offering a different kind of principled (not merely prudential) reason to reject its use for nearly all practical purposes and to work for its abolition in our society. Among prominent exponents of the interpretation of John Paul as implying that all intentional killing is intrinsically evil are Gerard Bradley[2] and E. Christian Brugger.[3] Bradley and Brugger interpret John Paul II through the lens of the "New Natural Law Theory" developed by, especially, Germain Grisez and John Finnis.[4] Grisez's and Finnis's thought regarding

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1. For a detailed study of Aquinas' use of terms that are important in contemporary action theory, see especially Pilsner, *Specification of Actions.* For further discussion including explanation (and defense) of John Paul II's understanding (expressed especially in *Veritatis Splendor*), see Kaczor, *Proportionalism.* For still further depth regarding the meaning of 'intentional,' see Cavanaugh, *Double-Effect Reasoning.*

2. Bradley, "No Intentional Killing."

3. Brugger, *Capital Punishment.*

4. Megivern, *Death Penalty,* 413, also contends that John Paul rules out capital punishment entirely, in principle, but without appealing to the Grisez-Finnis theory. Prejean, "A Response," on the other hand, recognizes, and regrets (see also her *Dead Man*

natural law and its application takes as its starting point their reading of Thomas Aquinas,[5] although they also intentionally go beyond or disagree with Aquinas in their moral theory[6] and—as with regard to capital punishment, as will be seen—sometimes also disagree with him regarding the application of natural-law reasoning. Brugger's statement regarding the importance of Aquinas on the topic of capital punishment in particular is striking but seems plausible:

> When Catholic scholars have asked how [capital punishment and killing in just war] can be lawful ..., the most influential response in the tradition has been that of Aquinas. ... [A]ll post-Aquinas arguments for the lawfulness of capital punishment are footnotes to the *Summa Theologiae,* II-II, q. 64. It is no exaggeration to say that the *rational* plausibility of the traditional philosophical position depends in large measure on the viability of Aquinas' reasoning.[7]

If, as will be argued here, John Paul's thought does not compel the conclusion that capital punishment is intrinsically evil, and perhaps even points in the opposite direction, then neither does it offer its own explicitly argued justification for the position that capital punishment is not intrinsically evil, or respond explicitly to objections to the view that capital punishment is not intrinsically evil. The interpretation and assessment of John Paul's view, then, cannot easily avoid consideration of the merit of Aquinas'. Furthermore, Aquinas is an important source of John Paul's moral thought. One can see arguments for the value of Aquinas' thought, and reliance upon it, in some of John Paul's

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Walking), that John Paul does not absolutely reject capital punishment.

5. Grisez, "First Principle of Practical Reason"; Finnis, *Aquinas.*

6. For their fully-developed thought, see especially Grisez, *Way of the Lord Jesus*; Finnis, *Natural Law and Natural Rights.* See also Grisez, Boyle, and Finnis, "Practical Principles, Moral Truth, and Ultimate Ends."

7. Brugger, *Capital Punishment,* 165.

pre-papal writings.[8] One likewise finds references to Aquinas in such papal writings as *Veritatis Splendor* (especially) and *Evangelium Vitae.* Another papal writing, *Fides et Ratio,* includes nuanced but strong statements of the importance of Aquinas' thought for the Catholic Church.[9]

Perhaps many in our culture, including some Catholics, would attempt to offer a different kind of justification for capital punishment, namely, one rooted in the social-contract theory developed by such thinkers as Hobbes and Locke. First, however, if, as will be suggested in chapter 3, an approach to morality and politics that relies solely on the classical understanding of Thomistic natural-law reasoning is vulnerable to Nietzsche's objections, then this is also true *a fortiori* of an approach that relies primarily on Hobbes and Locke. Second, it is especially clear from what John Paul says about politics in *Evangelium Vitae* that the modern social-contract approach is not a relevant interpretive key to his social teaching.[10]

For these reasons, then, assessment of the Bradley-Brugger reading of John Paul II must begin with a summary of the Grisez-Finnis reading of Aquinas's moral theory and

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8. E.g., Karol Wojtyła, "In Search of the Basis of Perfectionism"; idem, "On the Directive or Subservient Role of Reason"; idem, "On the Metaphysical and Phenomenological Basis"; idem, "Problem of the Theory of Morality."

9. John Paul II, *Fides et Ratio* 43–44, 57–58, 78.

10. For the relationship between Hobbes and Locke, see esp. Strauss, *Natural Right and History,* chap. 5. For discussion of the problems with this theory in itself and in relation to John Paul's thought, see Miller, "The Politics of a Culture of Life." For John Paul's rather explicit critique of this approach, see EV 20.

of Aquinas's treatment of capital punishment.[11] Their treatment of John Paul himself can then follow, after which we may proceed in turn to evaluations of and responses to their reading/criticisms of Aquinas and their interpretation of John Paul.

Theoretical Basis of Grisezan Critique of Aquinas on Capital Punishment

According to the Grisez-Finnis theory, Aquinas, in his treatment of the number of precepts of the natural law,[12] rightly recognizes an irreducible diversity of 'basic goods' that are constitutive of the nature of the human person—as distinguished from extrinsic goods 'for' the person—and that serve as ends for minimally practically reasonable human action. These goods, according to Grisez and Finnis, include such qualities as "justice and friendship," qualities that might typically be regarded as moral virtues.[13] Grisez's formulation of the list of goods[14] in fact includes these together (as one good).[15] Finnis's list[16] is slightly different; it includes "sociability (friendship)." In briefly describing this good, however, Finnis speaks of "that sociability which in its weakest

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11. This is, of course, not meant to suggest that the history of pre–*Evangelium Vitae* Catholic—more broadly, Judeo-Christian—thought regarding capital punishment is limited to what is found in Aquinas. For extensive and intensive surveys of the tradition, see Crowe, "Theology and Capital Punishment"; Megivern, *Death Penalty*; Brugger, *Capital Punishment,* chaps. 3–6.

12. STh I-II.94.2.

13. On friendship and virtue, see STh II-II.23.3 ad 1.

14. Grisez's 1983 formulation of the list of basic goods, with discussion, is found in *Way of the Lord Jesus,* 1:121–25.

15. Grisez, *Way of the Lord Jesus,* 1:123, 124.

16. Finnis, *Natural Law and Natural Rights,* 85–90.

form is realized by a minimum of peace and harmony amongst men, and which ranges through the forms of human community to its strongest form in the flowering of full friendship."[17] It seems plausible that even minimal "peace and harmony" would require each and all giving others their due, that is, justice. And Finnis continues by explaining that "friendship involves acting for the sake of one's friend's purposes, one's friend's well-being." This would seem to presuppose, minimally, giving one's friend her due, that is, justice.

Grisez and Finnis do not, however, seem to have in mind moral virtues when they speak in this context of "justice and friendship." William May, a frequent collaborator of Grisez and Finnis and for the very most part a defender of their theory, recognizes—and criticizes—their general unwillingness to consider moral virtue(s) among the basic goods (May suggests that some, but not all, of Finnis's writings do regard "practical reasonableness or virtue," apparently virtue in general, as a basic good).[18] In the context of his list of basic goods, Grisez seems to define justice as "harmony," that is, in a way that is independent of consideration of what it is objectively good for one to render to another as her due. Grisez eventually clarifies that "virtues do not provide a normative source distinct from propositional principles"[19] (the nature of which will be indicated next).

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17. Finnis, *Natural Law and Natural Rights,* 88.

18. May, "Contemporary Perspectives," 152–54.

19. Grisez, *Way of the Lord Jesus,* 1:193.

Furthermore, the goods are not limited to such qualities as justice and friendship. Among the others, according to both Grisez's and Finnis's lists, is life itself.[20] And all of the goods are morally relevant. Moral goodness, the Grisez-Finnis theory continues, requires adherence to the following principle: "In voluntarily acting for human goods and avoiding what is opposed to them, one ought to choose and otherwise will those and only those possibilities whose willing is compatible with a will toward integral human fulfillment"; indeed, this requirement is the 'First Principle of Morality'[21] (to be distinguished from the 'First Principle of Practical Reason,' that good is to be done and pursued, and evil avoided, with 'good' specified by the basic goods).[22] A number of 'modes of responsibility' specify what sorts of willing are and are not compatible with integral human fulfillment (these are the "propositional principles" mentioned above). Among these are the following: "One should not be moved by a stronger desire for one instance of an intelligible good to act for it by choosing to destroy, damage, or impede some other instance of an intelligible good,"[23] or "[O]ne should not choose to do any act which *of itself does nothing but* damage or impede a realization or participation of any one or more of the basic forms of human good."[24] Therefore, according to the Grisez-

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20. Grisez, *Way of the Lord Jesus,* 1:123, 124; Finnis, *Natural Law and Natural Rights,* 86–87.

21. Grisez, *Way of the Lord Jesus,* 1:184–89. Where there are, for the purposes of this discussion of their moral theory, no more than minor differences between Grisez's and Finnis's formulations, I shall usually focus on Grisez's.

22. Grisez, "First Principle of Practical Reason"; idem, *Way of the Lord Jesus,* 1:178–83.

23. Grisez, *Way of the Lord Jesus,* 1:189–92, 205–28, esp. 216–22.

24. Finnis, *Natural Law and Natural Rights,* 118–25, esp. 118.

Finnis theory, the intentional taking of human life, one of the basic goods, is never morally good; rather, it is always intrinsically evil and hence impermissible as end or means. Even the killing that takes place in a just war probably must not be chosen as such, even as a means.[25] Already in Grisez's explanation of this mode of responsibility, in his account of his moral theory, he indicates his view that capital punishment is at odds with full acceptance of this mode.[26]

Application of Critique to Aquinas on Capital Punishment

Grisez,[27] Finnis in his more recent thought[28] (his earlier position will be described below), and Brugger[29] bring this understanding to their reading of Aquinas on capital punishment. Additionally, when they do so, they focus especially on Aquinas' response to an objection.[30] The objection is that "it is not lawful ... to do that which is evil in itself," and "to kill a man is evil in itself." Thus, and it would seem plausibly, they take Aquinas's response—

> By sinning man departs from the order of reason, and consequently falls away from the dignity of his manhood, in so far as he is naturally free, and exists for himself, and he falls into the slavish state of the beasts, by being disposed of according as he is useful to others. ... Hence, although it be evil in itself to kill a

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25. Grisez, *Way of the Lord Jesus,* 2:904–6; similarly, Finnis, *Aquinas,* 285–87.

26. Grisez, *Way of the Lord Jesus,* 1:218–21.

27. Grisez, *Way of the Lord Jesus,* 2:891–94; see also his earlier treatment of this issue in idem, "Toward a Consistent Natural-Law Ethics of Killing," esp. 66–71.

28. Finnis, *Aquinas,* 279–84.

29. Brugger, *Capital Punishment,* 108–11, 165–79.

30. STh II-II.64.2 ad 3.

> man so long as he preserve his dignity, yet it may be good to kill a man who has sinned, even as it is to kill a beast. For a bad man is worse than a beast, and is more harmful, as the Philosopher states (*Polit*. i. 1 and *Ethic*. vii. 6).

—as something like a complete argument that capital punishment is not intrinsically evil, in view of its context as a response to the claim that capital punishment would, as killing, be intrinsically evil.

Moreover, they find problems with this argument. They question whether it makes sense to speak of the loss of human dignity and hence of the loss of the inviolability of such basic goods as life. Grisez says that Aquinas "fallaciously argues";[31] Finnis says that "Aquinas' argument ... clearly fails."[32] Bradley refers to the view "that the criminal forfeits his right to life by his bad actions, that he descends to the moral status of the beast," and comments: "I doubt whether anyone ever considered this assertion an argument, as opposed to a loose way of stating a conclusion in favor of capital punishment."[33] Brugger especially develops this point. He argues that Aquinas might mean either of two possible things in speaking of human dignity here. One possibility is that "the intrinsic goodness of human rational nature is the subject of human dignity." But, Brugger objects, "[S]ince one's rational nature cannot be lost, neither can one's dignity. Human dignity in this sense is predicated of human nature and therefore is not relative to one's moral state; one cannot 'fall away' from human dignity so conceived." The other possibility is that Aquinas has in mind the dignity of the human person *qua imago Dei.* However, Brugger explains, "Aquinas is clear that there is only one principal

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31. Grisez, *Way of the Lord Jesus,* 2:893 n. 107.

32. Finnis, *Aquinas,* 282.

33. Bradley, "No Intentional Killing," 158.

sense in which the image of God subsists in the human person, and that is by reason of human rational nature"—which "cannot be lost through sin," even though something that Brugger calls one of the "proper functions of that image," namely, the way of being in God's image that "corresponds to those who are just, inasmuch as the just know and love God, albeit imperfectly" in this life, can be termed "alienable"—is lost by someone who is not just but rather a sinner.[34]

They argue, furthermore, that Aquinas is inconsistent, in view of several affirmations that he makes elsewhere. The first is found in his explanation of why suicide is never morally lawful: "because everything naturally loves itself, the result being that everything naturally keeps itself in being, and resists corruptions so far as it can. Wherefore suicide is contrary to the inclination of nature, and to charity whereby every man should love himself. Hence suicide is always a mortal sin, as being contrary to the natural law and to charity."[35] Brugger, referring back to Aquinas' treatment of the principles of the natural law, takes Aquinas' point regarding suicide to reflect "the rational recognition of the fundamental goodness of human life."[36] Summarizing the Grisez-Finnis theory of goods and moral reasoning, Brugger argues, "We love in ourselves and in others the basic good of human life; we love, if you will, the good nature that God has created." As it is evil to kill oneself, so it is evil to kill another who shares one's human nature—even a sinner.[37]

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34. Brugger, *Capital Punishment,* 174–75.

35. STh II-II.64.5.

36. Brugger, *Capital Punishment,* 166.

37. Brugger, *Capital Punishment,* 169.

The second is that we are, in fact, to continue to love sinners with charity: "According to his nature, which he has from God, he has a capacity for happiness, on the fellowship of which charity is based, as stated above [II-II.25.3; II-II.23.1, 5], wherefore we ought to love sinners, out of charity, in respect of their nature";[38] "If we consider a man in himself, it is unlawful to kill any man, since in every man though he be sinful, we ought to love the nature which God has made, and which is destroyed by slaying him."[39] These texts might seem to contradict Aquinas' statement: "By sinning man departs from the order of reason, and consequently falls away from the dignity of his manhood."[40]

The third is that a sinner sentenced to death, although she could not justly use violence to resist the imposition of the sentence, nevertheless is not morally obliged to cooperate in that execution in every conceivable way, such as by fleeing if this is possible without the use of violence against the condemned's captors, or by doing other things generally necessary to maintain one's life.[41] This, Finnis points out, seems to imply that the sinner retains at least some of the rights that come from her human dignity.[42]

Finally, they suggest that the argument, if it works at all, "proves too much," since more people are sinners—even mortal sinners—than ought, in Aquinas' own explicit

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38. STh II-II.25.6.

39. STh II-II.64.6.

40. STh 64.2 ad 3. Grisez, *Way of the Lord Jesus,* 2:893 n. 107; Finnis, *Aquinas,* 282; and Brugger, *Capital Punishment,* 175, all cite STh II-II.25.6 in support of their argument for a contradiction in Aquinas; Brugger, *Capital Punishment,* 169, also cites II-II.64.6.

41. STh II-II.69.4 ad 2.

42. Finnis, *Aquinas,* 282.

view, to be subject to capital punishment. As Finnis says, Aquinas "himself permits capital punishment only for very grave wrongdoing."[43] Brugger, again, expands on this problem. He notes that Aquinas does not teach that capital punishment ought to be used in response to every mortal sin, but should only be used when the sin is especially grave and when the sinner is likely to pose a future danger. Brugger argues that the first condition (gravity) seems arbitrary, and that it would be difficult for human beings to make the distinctions entailed by either condition. He concludes: "These difficulties are effectively insurmountable."[44]

Although the Grisez-Finnis school's treatment of Aquinas' response to the objection that capital punishment is intrinsically evil, is probably the most important element of their analysis of Aquinas on the topic of capital punishment—insofar as they think that Aquinas' response fails (and that there is no other adequate response)—it is necessary, to complete the summary of their argument, to look briefly also at their handling of the body of the same article. Aquinas's answer to the question posted in the article, "Whether it is lawful to kill sinners?," includes the following:[45]

> Now every part is directed to the whole, as imperfect to perfect, wherefore every part is naturally for the sake of the whole. For this reason we observe that if the health of the whole body demands the excision of a member, through its being decayed or infectious to the other members, it will be both praiseworthy and advantageous to have it cut away. Now every individual person is compared to the whole community, as part to whole. Therefore if a man be dangerous and infectious to the community, on account of some sin, it is praiseworthy and advantageous that he be killed in order to safeguard the common good.

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43. Finnis, *Aquinas,* 282.

44. Brugger, *Capital Punishment,* 176–77.

45. II-II.64.2.

Grisez,[46] Finnis,[47] and Brugger all reject this reasoning, concluding that even if capital punishment were other than intrinsically evil, Aquinas would still not have provided an adequate explanation of the right of political authorities to impose it. Brugger takes this point up, regarding the relationship between the human person and the political community, most substantively in explicit relation to the problem of the death penalty. Brugger notes, in short, that "the existence of a member makes sense apart from the community in a way that the existence of a limb ... does not apart from the body." He adds that Aquinas himself seems to indicate in his commentary on the *Nicomachean Ethics* (I.I.5) that in a unity such as the political community "a part ... can have operations which are not the operations of the whole."[48] Hence, Brugger takes issue with the pushing of the part-whole analogy to justify state use of capital punishment, calling it "false (and dangerous)."[49]

Further Application of Critique of Aquinas in Interpretation of John Paul II's Thought

When Bradley and Brugger turn to John Paul, they read him as proposing, especially in *Evangelium Vitae,* with some contextual help from *Veritatis Splendor,* that

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46. Grisez, *Way of the Lord Jesus,* 2:893 n. 107. Cf. also ibid., 2:848: "Aristotle's notion of the state as a quasi-organic whole of which citizens are parts must be criticized" in light of, e.g., GS; also ibid., 2:850: "[I]t plainly cannot be government's proper end to promote virtue in general."

47. Finnis, *Aquinas,* 281. Cf. also his detailed reading of Aquinas' political theory in "Public Good: The Specifically Political Common Good in Aquinas," in which he takes Aquinas to support Grisez's view of the limits of political authority.

48. Brugger, *Capital Punishment,* 170.

49. Brugger, *Capital Punishment,* 176.

human life—even the life of one guilty of a most serious crime—is always an inviolable good. Bradley recognizes a possible difficulty: "The norm articulated in *EV* usually includes the term 'innocent'" (citing nos. 53 and 57).[50] He then adds, however, that John Paul's articulation of the moral norm forbidding euthanasia does not include the term "innocent," and that "[t]he commandment is most often stated simply as 'You shall not kill.'"[51] Brugger makes a similar argument. He cites a number of texts from *Evangelium Vitae* that refer to (all) human life as inviolable, inalienable, and so on. He concludes that although John Paul does not intend to teach that capital punishment is intrinsically evil, "the encyclical neither asserts nor implies that intentional killing in any form is or can be morally legitimate, and ... its language repeatedly implies the opposite"; therefore, "its intent may be to leave open the possibility" of a future Church teaching that all intentional killing, including capital punishment, is intrinsically evil.[52]

Brugger also adds another, and again similar, argument regarding John Paul's words in *Veritatis Splendor,* issued just over nineteen months before *Evangelium Vitae.* Brugger quotes John Paul in VS as speaking of, among other things, "the duty of *absolute respect for human life* [citing no. 50, emphasis Brugger's]."[53] He argues that "the logic of *Veritatis Splendor*'s account of the foundations of morality" leads to this duty of absolute respect for human life, and adds that although "[t]he encyclical's formulation of the relevant exceptionless moral norm is traditional," with its inclusion of the word

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50. Bradley, "No Intentional Killing," 159.

51. Bradley, "No Intentional Killing," 159–60.

52. Brugger, *Capital Punishment,* 26.

53. Brugger, *Capital Punishment,* 29.

"innocent," still it "says nowhere that the killing of the guilty is morally licit, nor, in light of its own moral logic, does it account for why the norm is formulated as it is. The death penalty is not mentioned."[54]

Furthermore, Bradley takes one of John Paul's statements in *Evangelium Vitae* as a contradiction and rejection of a key premise in Aquinas' defense of capital punishment. Commenting on the biblical story of Cain and Abel, and specifically on God's protection of Cain's life, John Paul says:[55]

> And yet God, who is always merciful even when he punishes, "*put a mark on Cain*, lest any who came upon him should kill him" (Gen 4:15). He thus gave him a distinctive sign, not to condemn him to the hatred of others, but to protect and defend him from those wishing to kill him, even out of a desire to avenge Abel's death. *Not even a murderer loses his personal dignity*, and God himself pledges to guarantee this.

This would seem to contrast sharply with Aquinas' position—"By sinning man ... falls away from the dignity of his manhood."[56] Thus, Bradley writes that Aquinas' means of distinguishing capital punishment from other, immoral, intentional killing, "is now foreclosed by Church teaching."[57] Bradley also appeals to *Veritatis Splendor,* to make a related point. He begins his essay by contending that both *Veritatis Splendor* and *Evangelium Vitae* deny the division between "public" and "private" moral realms, the

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54. Brugger, *Capital Punishment,* 30.

55. EV 9.

56. STh II-II.64.2 ad 3.

57. Bradley, "No Intentional Killing," 158. Brugger, *Capital Punishment,* 26–27, also cites this text. Kaczor, *The Edge of Life,* 147, likewise sees a contradiction, though his argument is generally critical of Brugger's.

notion that with regard to the prohibition of intrinsic evil there might be any "privileges or exceptions."[58]

What, then, of John Paul's teaching that while capital punishment ought not be inflicted on most murderers, there might be an exception in the "rare, if not practically non-existent" case in which there is no other way to safeguard society from further serious crimes by the convict?[59] In light of his critique in *Veritatis Splendor*[60] of proportionalism and related methodologies,[61] and despite the claims of some commentators who interpret *Evangelium Vitae*'s apparent openness in principle to capital punishment as proportionalist,[62] it seems most unlikely that John Paul would simultaneously regard capital punishment as intrinsically evil, and be open to its use even in merely hypothetical cases. Bradley and Brugger both suggest that *Evangelium Vitae* (and the *Catechism of the Catholic Church*)[63] treat capital punishment as closely analogous to private killing in self-defense—that is, as killing that, according to much of the Thomistic tradition and to continuing Catholic teaching, would have to be *praeter intentionem* to be morally licit.[64]

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58. Bradley, "No Intentional Killing," 155.

59. EV 56.

60. VS 71–83.

61. See Kaczor, *Proportionalism.*

62. McCormick, "The Gospel of Life," 16–17; Langan, "Situating the Teaching," 222.

63. CCC 2265–67.

64. Bradley, "No Intentional Killing," 156, 160–61; Brugger, *Capital Punishment,* 12–25.

Bradley thus raises the possibility that the conditions that John Paul places on the morally licit use of capital punishment—that there be no other way to defend against further murders (or the like) by the convict—are the conditions for *praeter intentionem* killing.[65] Here he draws partly from a position once suggested by Finnis. According to Finnis's original argument regarding capital punishment, punishment—capital or otherwise—involves a deprivation, even of a 'basic good,' which deprivation is "intended neither for its own sake nor as a means to any further good state of affairs. Rather, it is intended precisely itself as a good, namely the good of restoring the order of justice." Therefore, "capital punishment need not be regarded as doing evil that good may come of it."[66] To Finnis's proposal, Bradley adds that if death is not "the uniquely suited punishment for any crime," then capital punishment would involve the 'nonintentional' imposition of death only in the case of a criminal who would otherwise remain dangerous.[67]

Finnis, however, later abandoned his proposal, noting, for instance, that "at the end of the day, Aquinas himself rejects [the] conclusion that imposing and carrying out capital punishment involves no intent to kill."[68] And Brugger takes the Bradley argument a step further by drawing from Finnis's eventual conclusion, noting that even when done solely under the circumstances John Paul describes and solely with a defensive (remote) intention, it is unlikely that one could reasonably interpret capital punishment as anything

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65. Bradley, 164–65, 168.

66. Finnis, *Fundamentals of Ethics,* 129–30.

67. Bradley, "No Intentional Killing," 168–69.

68. Finnis, *Aquinas,* 280.

other than intentional killing.[69] Brugger points out that in capital punishment, death "*is* the measure of the punishment chosen. ... [T]he plan of action very clearly includes the criminal's death. ... The intent to kill cannot be separated from capital punishment, whatever other intentions accompany it."[70] Brugger thus concludes that John Paul's teaching should be taken as pointing toward the immorality of all capital punishment in principle.

Response to Critique: Natural-Law Moral Reasoning and Virtue

Although the members of the Grisez school are influential and make a formidable case for their position, I shall now argue that their interpretation of Aquinas and John Paul II on capital punishment is significantly flawed. I think that the flaws begin with their natural-law theory (both insofar as it aspires to be grounded in Aquinas, and insofar as it admits to going beyond Aquinas). I want to note in particular that there seems to be a problem with their understanding of how to do moral reasoning about acts that will affect other human persons. Again, for Grisez et al., the 'basic goods' are key in such moral reasoning. But what does respect for these goods in another person have to do with my own openness to 'integral human fulfillment' of myself?

One possible answer would be along the following lines. If I will contrary to the good of, for example, your life, then I am willing contrary to my own fulfillment, since life is also a good of myself, an aspect of my own fulfillment. It does seem clear that something like Grisez's 'goods,' including life, play some sort of important role in

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69. Brugger, *Capital Punishment,* 34–37.

70. Brugger, *Capital Punishment,* 37.

Aquinas' understanding of natural law, and properly so. It is not clear, however, that in relating these goods to the principles of practical and/or moral reasoning, Aquinas means to say—or that one can cogently say—that willing against their instantiations in others necessarily entails willing against one's own fulfillment, and hence acting contrary to one's own moral goodness. After all, your life (for instance) is yours, and mine is mine. It is not immediately clear, granting Grisez's understanding of life as a 'basic good of the human person,' that my life and yours have enough in common with each other to make this sort of argument against intentional killing work. To the extent that this is Grisez's argument, then the charge (more typically made on other grounds) that Grisez is more Kantian than Thomist—a charge Grisez and his colleagues argue is false[71]—nevertheless might take on a certain plausibility, since one might be reminded of Kant's "universal law" formulation of his categorical imperative.[72] At any rate, such an argument seems too abstract to work.

In his developed moral theory, Grisez adds a helpful consideration, namely, the role of community. Thus, he says that "there are seven categories of basic human goods which perfect persons and contribute to their fulfillment both as individuals and communities."[73] It would seem that if we are fulfilled "both as individuals and communities," then one's own openness to fulfillment will require respect for the goods constitutive of other members of one's community. Similarly, Grisez writes: "Integral

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71. For reference to this charge and a response by another of Grisez's colleagues, see George, "Recent Criticism," 1409.

72. Kant, *Grounding,* 30.

73. Grisez, *Way of the Lord Jesus,* 1:124.

human fulfillment means a single system in which all the human goods would contribute to the fulfillment of the entire human community."[74] If integral human fulfillment must by definition be communal—if community is part of our fulfillment—then, again, it will be necessary for me to respect the goods constitutive of other persons as well.

But this refinement of the theory may still not be sufficient. We must ask the question: What is a human community in the full and proper and fulfilling sense? What precise sorts of relationships must exist among people in order to have community in this sense? Suppose that those who have charge over the common good of a political community impose capital punishment on a murderer. Clearly, something is being done that is an attack on a very 'basic good' indeed 'of' the malefactor. But is it really obvious and certain that this act is necessarily at odds with the openness to fulfillment-in-community on the part of those in whose name the punishment of death is carried out?

It is perhaps more helpful to attend to what might be a suggestion on Aquinas' part that the 'good' of virtue plays a key role in reasoning about how to treat others. There has obviously been a resurgence of interest in 'virtue theory,' including Aquinas on virtue, in recent decades, perhaps beginning especially with Alasdair MacIntyre,[75] and continuing with Jean Porter,[76] Pamela Hall,[77] Robert Gahl,[78] James Keenan,[79] Martin

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74. Grisez, *Way of the Lord Jesus,* 1:222.

75. MacIntyre, *After Virtue.*

76. Porter, *Recovery of Virtue.*

77. Hall, *Narrative and the Natural Law.*

78. Gahl, *Practical Reason,* 173.

79. Keenan, *Virtues for Ordinary Christians.*

Rhonheimer,[80] and many others, not all of whom are in anything like full agreement with one other regarding other controverted points today in Thomistic moral theory (e.g., the relationship between speculative and practical reason, i.e., the normative significance, or lack thereof, of speculative knowledge of "nature," or of a natural hierarchy of goods) or its application (e.g., in sexual morality).

Already in his treatment of the diversity of precepts of natural law, Aquinas links the human person's *rational* nature to her social nature—to the fact that she is inclined to live with others and that doing so is a good of the human person: "Thirdly, there is in man an inclination to good, according to the nature of his reason, which nature is proper to him: thus man has a natural inclination ... to live in society."[81] And in the very next article, Aquinas asks "Whether all acts of virtue are prescribed by the natural law?"[82] He concludes that they are, if "considered as virtuous" (rather than "in themselves"), since the human person is *rational* and to act rationally is to act virtuously. An immediate advantage of seeing virtue and the virtues, like justice, as key principles in moral reasoning about acts affecting others would be that this enables us to "bridge" (more effectively than Grisez's theory does, I suggest) the good of others and one's own good. If I know that acting against such-and-such a good of yours would be contrary to reason and hence to virtue, then it becomes apparent why acting against that good would also be contrary to my own good and fulfillment.

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80. Rhonheimer, *Natural Law and Practical Reason,* 307–50; idem, *Perspective of the Acting Person,* passim.

81. STh I-II.94.2.

82. STh I-II.94.3.

We should note, furthermore, that Aquinas structures his treatment of the morality of particular actions—that is, he structures the Secunda Secundae—not around a list of 'basic goods,' but rather around a list of virtues: the three theological and four cardinal virtues. Hittinger expands on this point, referring to specific texts in the *Summa Theologiae* (especially the prologue to the Secunda Secundae: "the entirety of morality can be reduced [*reducta*] to the subject of virtues") that indicate that Aquinas' is a morality of virtues, even more so than of the principles of natural law.[83]

Virtue and Punishment in Aquinas

Of special note for the topic of capital punishment, Aquinas introduces the topic of punishment in general in the Prima Secundae. He speaks of punishment as restoring the "order" against which sin offends, including the social order that is overseen by human beings; he adds reference in this context to punishment as "just."[84] Several articles later he refers more explicitly to punishment as due when one has transgressed the order of justice, and as restoring equality of justice.[85] The topic of punishment is then taken up again in the Secunda Secundae toward the beginning of the treatise on justice.[86] Having explained that 'restitution' is an act of commutative justice, Aquinas asks "Whether it suffices to restore the exact amount taken?" He answers that this does not, in the end,

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83. Hittinger, "Natural Law and Virtue," 66 n. 3.

84. STh I-II.87.1 and ad 2.

85. STh II-II.87.6 and ad 3.

86. STh II-II.62.3.

suffice. He explains that when one does an injustice to another, one sins, and the sin itself (and not only the further damage caused) must be remedied, by punishment.

It is at least possible that when Aquinas goes on, several questions later, to discuss specific punishments, this general understanding, of what sort of thing punishment is and why it is reasonable and licit, is being presupposed and needs to be kept in mind in order to make sense of Aquinas' further arguments. In fact, although Aquinas does not explicitly invoke this general understanding of just punishment in the article on capital punishment, he does explicitly invoke it in his discussions of some other kinds of punishment, punishment by striking[87] and by imprisonment.[88] In addressing punishment by striking, Aquinas explains that "it is unlawful to do a person a harm, except by way of punishment in the cause of justice." This "cause of justice," then, seems to control the morality of punishment, at least the sort of punishment under consideration, punishment by striking, and probably punishment in general. Likewise, he concludes that "it is unlawful to imprison or in any way detain a man, unless it be done according to the order of justice, either in punishment, or as a measure of precaution against some evil." Again, the key principle seems to be 'the order of justice.'

We should note also that in the body of the article on imprisonment, Aquinas suggests a likeness between deprivation of full bodily freedom by imprisonment—as well as of bodily integrity by maiming, and also of pleasure or rest of the senses by the infliction of painful blows—and total deprivation of bodily life by death. This suggestion is echoed in Aquinas' discussion of the virtue of fortitude, where he refers to death as the

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87. STh II-II.65.2.

88. STh II-II.65.3.

greatest—but not the only—bodily evil.[89] Each of several distinct kinds of punishment, then, evidently takes away a bodily 'good of the person,' if only partially in some of these kinds. The difference between, say, imprisonment and capital punishment is, for Aquinas, to some extent something like a difference of degree, rather than simply of kind. Yet, they can all be permissible, first of all in light of the 'order of justice.'

It is most sensible, then, to (re)read what the Grisez-Finnis school takes to be Aquinas' main defense of capital punishment (as other than intrinsically evil)[90] in this same light. That is, it is sensible to read the argument as something other than an attempt to do the *initial* work, or all the work, of overcoming an objection that capital punishment is intrinsically evil. It is sensible to read the argument as *presupposing that when just*—when it "fits the crime," as we might say—capital punishment is already, precisely as just, potentially morally licit.

What, then, does the argument accomplish? Aquinas' replies should always be read in the dialogical context of the objections.[91] Now, the third objection does refer to what "is evil in itself." But it states, more specifically, that "to kill a man is evil in itself, since we are bound to have charity towards all men, and *we wish our friends to live and to exist,* according to *Ethic.* ix. 4." The reference to "charity" is, I contend, significant. The precise objection is that capital punishment is (as killing) contrary to *charity*. We

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89. STh II-II.123.4 and ad 1.

90. STh II-II.64.2 ad 3.

91. For more on the importance of Thomas' literary form, see Pieper, *Guide to Thomas Aquinas,* 75–88. Insofar as the dialogue form is rooted in Plato, it would be interesting to compare and contrast Thomas' understanding of the purpose of this form with Plato's own, as the latter is analyzed in Rhodes, *Eros, Wisdom, and Silence,* with a brief summary/conclusion on p. 542.

should consider than an act can seem at least minimally reasonable—in accordance with justice, for instance—and yet be contrary to charity, and hence, from Aquinas' perspective, still morally evil. I suggest that when Aquinas replies to the objection with his argument about sin and human dignity, he is presupposing that capital punishment is, as punishment, just, and *going on to explain that it can also* be compatible with charity, since one must have charity for society as a whole, and since allowing an offender to live might sometimes endanger society if the offender has set herself apparently irrevocably against the social good.

One can substantiate this reading—which in any event is in keeping with the assumption that Aquinas chooses his words (such as "charity") with care and precision (so that, in this case, "charity" means something more than the love that we have by our natural powers alone and that entails giving others what is minimally due to them)—by comparing this argument with some parallel passages elsewhere in the Secunda Secundae and also in two of Aquinas' other works. The first such passage in the *Summa Theologiae* is in the treatise on charity. In the body of the article,[92] Aquinas argues that "we ought to love sinners, out of charity, in respect of their nature" as having "a capacity for happiness" (but not in respect of their guilt). Several of the Grisezans have noted this article and suggested that it contradicts what Aquinas says about capital punishment, as previously discussed. But the second objection in the article observes that we (rightly) put sinners to death, and that this appears to be a work of hate, rather than charity. And in reply, Aquinas says that this is done "not out of hatred for the sinners, but out of the love of charity, by reason of which [the judge] prefers the public good to the life of the

92. STh II-II.25.6.

individual." Here, then, Aquinas specifically and explicitly connects the effects of vice or sin on the dignity of the person as a member of society, to the question of whether capital punishment is in keeping with the virtue of charity.

The other relevant passage in the *Secunda Secundae* is the article, "Whether vengeance is lawful?"[93] Here again, Aquinas refers to charity. He argues that if the avenger's "intention is directed chiefly to the evil of the person on whom he takes vengeance and rests there, then his vengeance is altogether unlawful ..." So, even if an act of vengeance is objectively proportionate to the evil done, this is not enough to make the vengeance morally licit. Something more is required. Why? Aquinas continues: "... because to take pleasure in another's evil belongs to hatred, which is contrary to the charity whereby we are bound to love all men." Specifically because of the distinctive requirements of charity, then, vengeance—punishment—must be more than just. And what more is necessary for this to happen? Aquinas explains: "If, however, the avenger's intention be directed chiefly to some good, to be obtained by means of the punishment of the person who has sinned (for instance that the sinner may amend, or at least that he may be restrained[94] and others be not disturbed, that justice may be upheld, and God honored), then vengeance may be lawful, provided other due circumstances be observed." Concern, then, that an act of punishment have something significant to do with—for example—protecting society from future injury has to do with concern that punishment be not merely just, but also charitable.

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93. STh II-II.108.1.

94. The general point that I am discussing here, and especially Aquinas' reference to "restraint," is missed by the reading of Aquinas in Long, "*Evangelium Vitae,*" 519–36.

The point is further clarified elsewhere in Aquinas' corpus. One key text on punishment argues, "That it is lawful for judges to inflict punishments."[95] Aquinas begins by referring punishment to the "order" of "justice." Only then—as a further and distinct (though related) point—does he speak of the conflict between "the life of certain pestiferous men" and "the common good which is the concord of human society," and then of that "concord" as analogous to the health of a body and of the evil persons as analogous to diseased organs of the body. These latter arguments, then, are not a complete argument for the morality of capital punishment, an attempt to overcome as it were from the beginning a concern that capital punishment is intrinsically evil; rather, they presuppose the more basic point about justice as allowing the killing of those who commit grave crimes.

A final, relevant text concerns love of enemies;[96] the objection (like STh II-II.25.6 obj. 2) is that "we cannot lawfully kill one whom we are bound to love in charity," but it is lawful to kill evildoers: "Therefore we are not bound to love our enemies." Aquinas begins his reply by insisting "that he whose office prescribes it, may lawfully punish evil-doers or even kill them while loving them out of charity." He explains that there can be several reasons or motives for causing "temporal evil for those whom we love in charity." These include the profit that will be obtained by, or the harm that will be avoided to, others by the downfall of an enemy. They *also* include—distinctly (and, it would seem, more fundamentally)—the "preserv[ation of] the order of divine justice." In the *Summa Theologiae,* then, when Aquinas speaks of the social benefit of punishment—including

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95. SCG III.146.

96. Aquinas, *On Charity* 8 ad 10.

capital punishment—as that which makes such punishment harmonious with charity, he is presupposing, and adding to, an understanding that such punishment can be inherently just, simply as fitting punishment for a crime.

Aquinas is, then, consistent in speaking both of human life as a good of the human person, and of capital punishment as morally acceptable. In speaking of human life as what Grisez et al. would call a 'basic good,' he does not mean to say that it is simply inviolable. Rather, it can be taken when (and only when) both justice—and also, beyond this, charity—permit doing so. In the case of someone who has committed a grave crime, capital punishment, inflicted by those who have responsibility for the good of the community, might be proportionate and hence just. *And* if the criminal seems to have set herself irrevocably against the good of society, such that allowing her to live would endanger that society—if she has, in this precise sense, willed and acted in such a way as to compromise her dignity as a rational and therefore *social* being—then taking her life is, furthermore, in keeping with charity, and, hence, being both just and in keeping with charity, capital punishment in such a case is morally licit.

It is noteworthy that for Aquinas, it is precisely the concern for these distinctive requirements of charity that places real limits on when capital punishment may be used. This can be seen by considering his "excision of a member" analogy for the killing of an evil member of a community in the context of what he says about actual bodily mutilation, whether for punishment or for other reasons. Aquinas thinks that such mutilation is sometimes morally licit. He takes up the objection that "the welfare of the soul is to be preferred to the welfare of the body. Now it is not lawful for a man to maim himself for the sake of the soul's welfare: since the council of Nicea punished those who

castrated themselves that they might preserve chastity. Therefore it is not lawful for any other reason to maim a person." He begins his reply:[97] "A member should not be removed for the sake of the bodily health of the whole, unless otherwise nothing can be done to further the good of the whole. Now it is always possible to further one's spiritual welfare otherwise than by cutting off a member, because sin is always subject to the will: and consequently in no case is it allowable to maim oneself, even to avoid any sin whatever." This seems to imply quite strongly that since capital punishment must be analogous to the removal of a diseased member of society to be fully in keeping with charity and hence licit, it must be necessary—or at least close to necessary—for the safeguarding of social peace in order to be licit.

One can also see this, in fact, in what Aquinas says about capital punishment itself: in conformity with and imitation of the divine order, "human justice ... puts to death those who are dangerous to others, while it allows time for repentance to those who sin without grievously harming others."[98] Likewise, he speaks of the infliction of capital punishment on the "incurable."[99] Likewise, his defense of the execution of the evil has as a premise that "the danger which threatens from their way of life is greater and more certain than the good which may be expected from their improvement."[100] Again, these restrictions are not arbitrary. Nor do they seem so different from the sorts of factors that judges must take into account in deciding, for example, whether and for how long

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97. STh II-II.65.1 ad 3.

98. STh II-II.64.2 ad 2.

99. STh II-II.25.6 ad 2.

100. SCG III.146.

someone is to be imprisoned. Bradley himself writes that human persons are able to make judgments about who, due to their criminal histories, will remain dangerous in the future, and therefore ought to be sentenced to life imprisonment.[101]

Finally, Lawrence Dewan has responded[102] to Finnis regarding the status of political society in Aquinas, and has made the case that political society is in fact a 'basic human good.' In Dewan's account, there is nothing "dangerous" about this conception of society. Dewan argues that Finnis downplays the role of virtue in a number of Thomistic texts regarding the political community, that our natural social inclination requires the virtues that are distinctive to this community, and that "any diminution in nobility that the political as such suffers relative to the eye of our mind cannot fail to affect the way politics is lived, and especially what we expect from our leaders. The Finnis focus on the limitation of political jurisdiction moves us from a definitely *moral* conception of political life to something much less obviously so."[103] This consequence of the Finnis view seems, one might say, dangerous.

But how far does the part-whole analogy go? This seems important since capital punishment alone seems an "absolute" severing of the bond between the community and the individual; hence Aquinas' emphasis on the analogy specifically when he is treating capital punishment. The analogy would have to be a significant one in order to explain why, in case of conflict, one may prefer charity for the community over charity for the individual, even to the point of putting to death the individual who is sinfully dangerous

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101. Cf. Bradley, "No Intentional Killing," 164.

102. Dewan, "St. Thomas, John Finnis, and the Political Good."

103. Dewan, "St. Thomas, John Finnis, and the Political Good," 303.

to the whole. Aquinas does not deny Aristotle's statement that the good of the political community is better and more perfect than that of the individual.[104] He likewise seems to accept that "as hands and feet cannot exist apart from a human being, so neither is a human being self-sufficient for living apart from a political community."[105] As Brugger notes, Aquinas qualifies the analogy, and Dewan gives a detailed and helpful account of the basis for the qualification. But such is the individual person's need, in order to be fully herself, for the virtue that in turn develops only in the context of the political community, that the analogy is still quite significant.[106] This significant but non-absolute part-whole analogy for the person-state relationship seems sufficient to ground Aquinas' conclusion regarding the state's authority to impose capital punishment.[107]

Rereading of John Paul II in Light of Aquinas

Aquinas' conclusions regarding capital punishment and the limits on its morally acceptable use may not go as far as does John Paul II's teaching that capital punishment is not to be used except in those cases in which is truly necessary for the defense of society, such as "are very rare, if not practically non-existent."[108] Neither, however, is Aquinas'

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104. Aquinas, *Commentary on Aristotle's* Nicomachean Ethics I.30–31.

105. Aquinas, *Commentary on Aristotle's* Politics I.1.22.

106. Cf. Dewan, "St. Thomas, John Finnis, and the Political Good," 300.

107. Dewan, "Thomas Aquinas, Gerard Bradley, and the Death Penalty," 318–19. See also Jensen, "Good and Evil Actions," 167–79, for a response to Grisez and Brugger on Aquinas that adds further detail to my treatment of Aquinas on justice, and that complements Dewan's treatment of the person-state relationship.

108. EV 56.

full conclusion so different from John Paul's practical conclusion as might initially be thought.[109] But is John Paul's underlying reasoning significantly different from Aquinas'; does he mean to rule out all intentional killing, and hence capital punishment insofar as it is intentional killing? There are several reasons to think that this is not John Paul's view. First, he simply does not say the sorts of things about capital punishment that he says about the killing of the innocent: that it is necessarily unjust, intrinsically evil, never permissible.[110] On the contrary, he indicates that capital punishment could, at least hypothetically (though, at most, very rarely), be licit. Brugger is correct that capital punishment could not, ever, reasonably be understood as *praeter intentionem* killing. It is not clear why, if Bradley and Brugger are correct about John Paul's argument, he would not follow that argument to what Brugger correctly sees as its conclusion, rather than a genuinely different one. This can be seen especially clearly, I think, by noting what John Paul goes on to say immediately after his treatment of capital punishment: "If such great care must be taken to respect every life, even that of criminals and unjust aggressors, the commandment 'You shall not kill' has absolute value when it refers to the innocent person."[111] It seems clear that he means somewhat to contrast (as well as to compare) the "great care" with which the intentional killing of the guilty must be avoided, with the "absolute value" of the commandment against the intentional killing of the innocent.

Pace Bradley and Brugger, there does not seem to be anything in John Paul's moral methodology that would compel the conclusion that capital punishment, qua

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109. As e.g. by Long, "*Evangelium Vitae*."

110. EV 57.

111. EV 57.

intentional killing, is intrinsically evil. Like Aquinas, who grounds his rejection of the killing of the innocent (the destruction of a good of the innocent person) in the rational nature and consequent self-possession of the human person,[112] John Paul consistently (in pre-papal and papal writings) links the (general) inviolability of the goods of the person to the dignity of the person as an end (or as capable of having ends) and not as a means; in other words, to what he calls the requirement of "love for"—rather than "use of"—persons,[113] which John Paul refers to as the "primordial moral requirement."[114] The "love" that is shown by respecting the person as more than a mere means, and hence by respecting the goods of the person, is a moral virtue.[115] It is a foundation for and hence very closely related to, even in some sense the same as, the commandment to love, but the two are "not, strictly speaking, identical."[116] It is closely related to the virtue of justice, as it requires especially fairness to the other as a person, giving them their due, although unlike justice, "love is concerned with persons directly and immediately; affirmation of the value of the person as such is of its essence. ... [I]t would be quite untrue to assert that love for a person consists merely in being just."[117] This "love" does not, however, seem to be the theological virtue of charity in its fullness. And it is not clear why the requirement, made known by reason, for this sort of love for persons as more than mere means to one's

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112. STh II-II.64.1 ad 2.

113. E.g., LR, esp. 41; VS 48, 50; EV 19.

114. VS 48.

115. LR 119–40.

116. LR 41.

117. LR 42.

own ends, should be taken as entailing that it can never be in keeping with justice and charity to punish a person who is guilty of a crime and dangerous to society in a way that is at odds with the goods of the person. Aquinas clearly (if implicitly) denies this implication, as has been discussed, and John Paul nowhere affirms it.

It is true that, as Bradley and Brugger note, John Paul's treatment of capital punishment is preceded by his explanation of legitimate defense, and is introduced by the words, "This is the context in which to place the problem of the death penalty."[118] But it does not follow that John Paul means to say that capital punishment could only be morally licit if it involved *praeter intentionem* killing. Clearly, John Paul is teaching that the circumstances in which capital punishment could be licit are similar to those required for legitimate defense. It does not follow, however, that he is teaching that legitimate capital punishment would need to have the same moral specification as does legitimate defense. Indeed, he suggests otherwise. John Paul goes on to write: "The primary purpose of the punishment which society inflicts is 'to redress the disorder caused by the offence.' 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." This seems remarkably similar to what Aquinas says about justice, restitution, and punishment. When John Paul then indicates the practical norm governing the use of capital punishment, he does not deny that this "primary purpose" of punishment in general remains the "primary purpose" of capital punishment specifically.

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118. EV 56.

In fact, having spoken of this purpose, and then of two secondary ones, "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," he says: "It is clear that, for *these purposes* [emphasis added] 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." Why ought capital punishment not be used for most or all practical purposes? Not because it would have to involve *praeter intentionem* killing to be licit, but because while having the same purposes as do other punishments—as does punishment in general—it is not generally the punishment that best fulfills those purposes.

It remains, then, more significant than Bradley and Brugger allow that when John Paul solemnly formulates exceptionless moral norms against the killing of the innocent in general, and against abortion in particular, he uses the word "innocent."[119] It is true that he does not use this word when he similarly expresses a moral norm against euthanasia. This norm, however, refers to "the deliberate and morally unacceptable killing of a human person."[120] The words "morally unacceptable" here replace the word "innocent" in the two norms that precede. While it would perhaps introduce unnecessary complexities to use the word "innocent" in this case, since euthanasia is sometimes suicide, John Paul seems to choose language that does not foreclose the possibility that some kinds of "deliberate killing"—notably, capital punishment—might not be morally unacceptable.

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119. EV 57, 62.

120. EV 65.

What, then, of John Paul's comment on God's treatment of Cain, "Not even a murderer loses his personal dignity,"[121] which, as mentioned above, could certainly sound like a disagreement with Aquinas? Remember that, for Aquinas, the argument about human dignity presupposes that capital punishment is just, and then seeks to establish that it is, in addition, in keeping with charity—when it is necessary for the defense of society. It does not seek to establish that capital punishment would be the right thing to do any time someone has committed a grave crime like murder. Aquinas does not say that because someone is a murderer, it is automatically in keeping with full respect for human dignity, with charity, to kill him. And note also that, in the biblical story on which John Paul is commenting, Cain does not go on to commit further murders (and, presumably, God knows that Cain will not). It is reasonable to take the point of John Paul's comment to be that a murderer does not lose his personal dignity in a way that would *automatically* make it appropriate to kill him—*regardless of social need*. Thus, it is reasonable to take John Paul's point to be one that does not disagree sharply with Aquinas' view.

In fact, we should pay attention to something else in the commentary on Cain and Abel. Three times in one paragraph—twice in his own words, once in a quotation from St. Ambrose—John Paul refers to God's sparing of Cain's life as "merciful" or as an act of "mercy."[122] It is specifically charity or mercy[123] that rules out the unnecessary use of capital punishment. It is probably true that John Paul allows only a narrower sense of the

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121. EV 9.

122. EV 9.

123. For John Paul on mercy as another term for distinctively divine love (charity) for the sinner, see e.g. RH 9. Further details of John Paul's theology of mercy will be the subject of chap. 2.

"necessity" that would permit capital punishment than Aquinas does. This is likely because of John Paul's more developed theology/doctrine of charity/mercy and its importance for both person and society, which will be detailed in the subsequent chapters.

Finally, as Dewan argues, Bradley seems to misread what he takes to be a key text in *Veritatis Splendor*. Dewan denies that the text about "privileges or exceptions" regarding the prohibition of intrinsic evil has anything to do with the public/private distinction, and contends that "[o]ne could say that capital punishment is a morally virtuous act, an act of justice, but one that is licitly performable only by a person in the appropriate public office," while unjust homicide remains forbidden for all.[124] Indeed, John Paul quotes the relevant text in *Evangelium Vitae,* specifically in the context of a statement of the absolute norm against taking "innocent" life.[125]

But even if this understanding of the public-private distinction, with the person as in some significant sense a part of a larger public, more specifically political, whole, might be philosophically cogent, as suggested above in the discussion of Aquinas on politics and virtue, can it be reconciled with the Church's developed teaching, or is Grisez correct to contend, as noted above, that it cannot? On the one hand, there are indeed some contemporary texts from the Church's official magisterium that seem to downplay the specifically moral character of the common good that the political community is to pursue, in favor of an understanding that focuses more on the rights of the individual and

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124. Dewan, "Thomas Aquinas, Gerard Bradley, and the Death Penalty," 313.

125. EV 57.

on social peace, with such moral virtues as justice perhaps only instrumental to these goals rightly understood.[126] There is similar language in *Evangelium Vitae* itself.[127]

On the other hand, however, the emphasis on rights and peace as goals and virtue as an instrument is not necessarily a denial of the Aristotelian-Thomistic understanding of the importance of virtue in itself as a goal for the political community. Furthermore, even if the political community is to pursue virtue more as a means than as an end, this does not necessarily mean that the virtue pursued as a means for the community is not as essential to the perfection of its members as Aristotle and Aquinas think—or that the further ends pursued by the political community are not also especially necessary for that perfection. Hence the *Catechism* not only speaks of the political community as natural to the human person,[128] but also indicates regarding the common good, to which "the good of each individual is necessarily related": "it is in the *political community* that its most complete realization is found."[129]

Also, there is again the statement in *Evangelium Vitae,* precisely in the context of the treatment of capital punishment: "The primary purpose of the punishment which society inflicts is 'to redress the disorder caused by the offense.' Public authority must redress the violation of personal and social rights by imposing on the offender an adequate punishment."[130] This would seem to be a reference to the order of justice in

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126. E.g., GS 74 (cited by Grisez); CA 47; CCC 1906–10.

127. EV 71.

128. CCC 1882.

129. CCC 1905, 1910.

130. EV 56.

itself and to political authority as having responsibility for this order. Finally, there is at least one recent official Church document that points quite explicitly in the direction of including the Aristotelian-Thomistic understanding. The *Compendium of the Social Doctrine of the Church* teaches: "The common good ... can be understood as the social and community dimension of the moral good."[131] While all persons and social groups have responsibility for this common good, the political community has special responsibility for it, since it "*is the reason that the political authority exists*"; "political institutions" have as their "purpose ... to make available to persons the necessary material, cultural, moral and spiritual goods."[132] The *Compendium* goes on to quote John XXIII's reference to the connection between the political community and the human conscience's revelation of and enjoining of obedience to "a moral and religious order," apparently as valuable in itself as well as for the "solution of problems" of individuals and of society.[133]

The Need for Study of John Paul on Mercy

I argue, then, that the Grisezan reading of Aquinas and of John Paul II is mistaken. Aquinas' defense of capital punishment as morally licit in certain cases is coherent, decent, and plausible. John Paul II does not obviously contradict this defense, and is not best understood as pointing toward a rejection of all capital punishment in principle. Yet I have suggested in the introduction to this dissertation that his rejection of capital punishment when not necessary to safeguard society from future attacks by someone who

131. CSD 164.

132. CSD 165–68.

133. CSD 384.

has committed a grave crime is a matter of principle rather than merely a prudential judgment (even if his statement that cases of such necessity are rare is a prudential judgment). I have likewise suggested in this chapter that the principle at work is mercy. It is necessary then to verify and explicate this claim by proceeding to a closer investigation of John Paul's understanding of the nature and importance of mercy.

CHAPTER II
MERCY AND LIMITS ON CAPITAL PUNISHMENT

Evangelium Vitae, Human Dignity, and the Capacity for Conversion

As argued in chapter 1, John Paul II does not seem to state or imply that capital punishment is intrinsically evil; yet he teaches that it ought not be used "except ... when it would not be possible otherwise to defend society." He introduces this teaching by speaking of the importance of respect for human dignity. I shall now contend, as also suggested briefly in the introduction and chapter 1, that John Paul's understanding in *Evangelium Vitae* of human dignity is very closely linked with his thought regarding mercy. Hence a thorough explication of his theology of mercy will be necessary in order to provide a full grasp of what he teaches, and why, regarding capital punishment.

John Paul prefaces his teaching regarding capital punishment[1] by linking it with defense, as has been noted and interpreted previously. To repeat, he then adds explicit reference to human dignity: "This is the context in which to place the problem of the death penalty. ... The problem must be viewed in the context of a system of penal justice ever more in line with human dignity and thus, in the end, with God's plan for man and society." This is followed, in turn, by his statement of the primary and secondary purposes of punishment:

> The primary purpose of the punishment which society inflicts is "to redress the disorder caused by the offence." 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 fulfils the purpose of defending public order

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1. EV 56.

> 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.

It is then that John Paul continues: "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."

The basic logic seems to be as follows. Punishment must be in keeping with human dignity. In order for this to be so, all of the purposes of punishment—including the secondary ones—including "offering the offender an incentive and help to change his or her behavior and be rehabilitated"—must be achieved, insofar as this is possible (this is, again, not to say that the primary purpose, justice, does not still supply the act with its moral specification).[2] In order for this condition, in turn, to be fulfilled, society must refrain from the use of capital punishment, except when one of the other secondary purposes ("defending public order and ensuring people's safety") absolutely requires it.

The importance of this reference to human dignity can be further substantiated by noting again that there are also two other places in the text of *Evangelium Vitae* where John Paul mentions either "human dignity" or something possibly equivalent, specifically in the context of references to the problem of capital punishment. The first, which again has been mentioned in my introduction and discussed in the previous chapter, is in John Paul's commentary on the story of Cain and Abel, and specifically of God's protection of Cain's life: "*Not even a murderer loses his personal dignity,* and God himself pledges to

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2. *Contra* not only Bradley and Brugger, previously discussed, but also Long, "*Evangelium Vitae,*" 538, 541, 549.

guarantee this."[3] To repeat the conclusion of my interpretation of this statement, John Paul is not disagreeing with Aquinas' view that capital punishment might sometimes be permissible; he is, however, emphasizing (again, in harmony with Aquinas) that the justice of capital punishment for a particular kind of crime does not mean that its use in the case of that crime is necessarily fully warranted—and this because capital punishment as just retribution *alone* does not satisfy the requirements of human dignity.

The second such mention, noted in my introduction, is found in John Paul's discussion of what he sees as the biblical demand for "reverence and love for every human life."[4] There he writes: "Of course we must recognize that in the Old Testament this sense of the *value of life*, though already quite marked, does not yet reach the refinement found in the Sermon on the Mount. This is apparent in some aspects of the current penal legislation, which provided for severe forms of corporal punishment and even the death penalty" (emphasis added). Again, for John Paul, a fully "refin[ed]" sense of the value or dignity of human life places significant limits on the use of capital punishment.[5]

What does John Paul mean by 'human dignity' and the like? As suggested by the reference above to the Sermon on the Mount, John Paul emphasizes the theological, or more specifically Christological, basis for and meaning of human dignity. This is in fact the case beginning in his introduction to the encyclical. There he refers to "the wonderful truth recalled by the Second Vatican Council: 'By his incarnation the Son of God has

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3. EV 9.

4. EV 39.

5. EV 40.

united himself in some fashion with every human being.' This saving event reveals to humanity not only the boundless love of God ... but also the *incomparable value of every human person.*"[6] He adds: "The dignity of this life is linked not only to its beginning, to the fact that it comes from God, but also to its final end, to its destiny of fellowship with God in knowledge and love of him."[7] Now, the life and love of God revealed and conferred by Christ is something to be received by being lived out. Through the prophets, God promised to give human beings a "new heart," which

> will make it possible to appreciate and achieve the deepest and most authentic meaning of life: namely, that of being *a gift which is fully realized in the giving of self.* ... It is in the coming of Jesus of Nazareth that ... a new heart is given through his Spirit. ... This is the *New Law* ... and its fundamental expression, following the example of the Lord who gave his life for his friends ..., is *the gift of self in love for one's brothers and sisters.*[8]

Or, similarly: "Christ's blood reveals to man that his greatness, and therefore his vocation, consists in *the sincere gift of self.* ... Whoever in the Sacrament of the Eucharist drinks this blood and abides in Jesus ... is drawn into the dynamism of his love and gift of life, in order to bring to its fullness the original vocation to love which belongs to everyone."[9] What these statements indicate, in short, is that human dignity involves our capacity to receive through Christ a participation in God's self-giving love.

Respect for human dignity—which respect is an essential element of living out one's own dignity—entails respect for this capacity in others and the will to promote it,

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6. EV 2.

7. EV 38.

8. EV 49.

9. EV 25.

including by helping the sinner return to communion with God. Accordingly, St. Ambrose says in his commentary on God's treatment of Cain, quoted by John Paul, that "God ... preferred the correction rather than the death of a sinner."[10] This concern is seen in the pope's presentation of his norm concerning capital punishment, and specifically in his use of words indicating that human dignity requires that society do what it can (without failing to defend itself as really necessary) to help the offender be rehabilitated. The nature of this call to help bring about conversion now requires closer examination.

The Possible Importance of Allowing Time for Conversion

It may be asked why one would need to "prefer" either "correction" or "death" (in Ambrose's words), that is, why non-capital punishment is more helpful for rehabilitation. One possible answer is suggested by John Paul when he refers, as one of several examples of signs of Christ's victory and of hope in our culture, to "a *growing public opposition to the death penalty,* even when such a penalty is seen as a kind of 'legitimate defense' on the part of society." He explains: "Modern society in fact has the means of effectively suppressing crime by rendering criminals harmless without definitively denying them the chance to reform."[11] This might mean that those given more time to reform (in other words, more time to live) are more likely to do so. Aquinas writes that "human justice ... allows time for repentance to those who sin without grievously harming

10. EV 9.

11. EV 27.

others," and this in imitation of God.[12] John Paul might have something like this in mind, perhaps among other things that will be explained below.

Someone might, however, further object that imminent death is an especially effective motive for conversion. Aquinas also writes that "the evil ... have at the critical point of death the opportunity to be converted to God through repentance. And if they are so stubborn that even at the point of death their heart does not draw back from evil, it is possible to make a highly probable judgment that they would never come away from evil to the right use of their powers."[13] One could respond that, as shown in the previous chapter and also in the quotation just above, Aquinas is speaking of those who must be executed for the safety of society. One could add that all people will die at some point, and that many are likely to be aware for at least some time that death is approaching, and that someone who is punished with something other than death might still, at some later point in her life, have the awareness of imminent death as an incentive to reform if this would really be helpful—as well as more time in the interim for other experiences that might also be helpful incentives. Therefore, again, it is possible that one of the reasons that John Paul sees avoiding the use of capital punishment as conducive to realizing the rehabilitative end of punishment is that sparing the criminal's life allows the criminal more time for repentance and conversion, without thereby taking away (eventual) death as a final motive for conversion.

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12. STh II-II.64.2 ad 2.

13. SCG III.146.

John Paul's Call to Provide "Incentive" for Conversion

Granting all of this about the value of "time for repentance" (Aquinas) as an important element of "the chance to reform" (John Paul), it seems that there is still more to John Paul's point about the conflict between respect for human dignity and the unnecessary use of capital punishment. Again, he says that punishment has, as one of several secondary purposes, "offering the offender an incentive and help to change his or her behavior and be rehabilitated."[14] We have seen how, in Aquinas' view, using capital punishment, that is, imposing death, might sometimes offer an "incentive" for conversion. We have likewise seen how withholding capital punishment and allowing the offender to live might offer "help," in the form of time and opportunities, in changing and being rehabilitated. But how does withholding capital punishment offer what could be called an "incentive" for this? John Paul's words seem to imply that inflicting something less than capital punishment does more than simply leave open future opportunities for reform. He seems to imply that withholding capital punishment positively promotes conversion and rehabilitation.

John Paul's commentary on God's treatment of Cain makes reference, as has been noted briefly, not only to "human dignity" and to "correction rather than death," but also to "mercy," which (with its adjective derivative) is used three times: "And yet God, who is always merciful even when he punishes, 'put a mark on Cain, lest any who came upon him should kill him' ... And it is precisely here that the paradoxical mystery of the merciful justice of God is shown forth. As Saint Ambrose writes: 'Once the crime is

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14. EV 56.

admitted at the very inception of this sinful act of parricide, then the divine law of God's mercy should be immediately extended.'"[15] To understand how withholding just, but unnecessary, use of capital punishment might promote conversion, it is now necessary to examine the theology of mercy.

Contemporary Views of Mercy as Context for John Paul's Teaching

It is perhaps somewhat well known among Catholics that John Paul was interested in the topic of mercy, at least that of God's own mercy. Even those who are unaware that he dedicated his second papal encyclical, *Dives in Misericordia* (1980) to this topic, might be familiar with his beatification (1993) and canonization (2000) of Faustina Kowalska, the mystic who promoted the "Divine Mercy" devotion, and his designation, in accordance with this devotion, of the Second Sunday of Easter as Divine Mercy Sunday.[16] Thus, near the end of his funeral homily for John Paul, Ratzinger reflects on how the late pope "interpreted for us the paschal mystery as a mystery of divine mercy";[17] and the official prayer for the cause of his own canonization refers to his "[t]rusting fully in [God's] infinite mercy."[18]

What exactly mercy is, and whether or when/how it ought to be used, is a matter of debate within our culture, and the nature and significance of John Paul's understanding of mercy might stand out more clearly against the background of this debate. One might

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15. EV 9.

16. HC 4.

17. Ratzinger, "Funeral Mass of the Roman Pontiff."

18. Diocese of Rome, "Prayer for asking graces."

consider, first, the following excerpt from news coverage of an impending execution: "'Spisak killed three people, tried to kill at least one other and shot a fifth in his admitted plan to kill as many African-Americans as possible and start a race war in Cleveland,' the [Ohio parole] board said in its report to [Gov.] Kasich. 'A recommendation for mercy is not warranted in this case.'"[19] The understanding that seems to be implicit in this statement is of mercy as something that is bestowed in response to a favorable balance of mitigating vs. aggravating factors in a crime, apart from considerations of society's ability to prevent the criminal from posing a danger in the future. Some recent scholarly treatments of the topic of mercy are similar, even when they disagree among themselves regarding whether/when mercy, as they understand it, ought to be shown. David Scheffer, on the one hand, argues that mercy, in the form of withholding less than the maximum punishment, would be inappropriate in the case of what he calls "atrocity crimes" (those that are of great magnitude and led by the socially powerful); victims, he says, need this retribution, and so society must punish accordingly, even when individuals may choose to forgive.[20] In contrast, Ernie Lewis, focusing on racism and other abuses in the criminal justice system and especially those found in capital cases, says that mercy, again understood as refraining from using capital punishment, is the proper way of working against these abuses[21]—in other words, that it ought to be used because those sentenced to death are victims of these abuses rather than really deserving of capital punishment.

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19. Guillen, "Nazi sympathizer Frank Spisak prepares for execution."

20. Scheffer, "Why International Law Matters," 105, 113–15.

21. Lewis, "Echoes of Grace," 53–57.

Those who seek to avoid conflating mercy and justice do not always agree that mercy is appropriate. Albert Alschuler acknowledges that justice itself must take into account circumstances of a crime and personal characteristics of a criminal and thus may require or forbid mitigating punishment; mercy must involve mitigation beyond what justice requires but within what justice allows. He adds that this must be a "grace" rather than a "duty," and is concerned that it leads to some inequality in treatment of criminals. Is mercy then always at odds with justice? He sees mercy as acceptable especially in light of the criminal justice system's current focus on victims (though he questions whether the focus ought not rather be on society), and especially on their desire for "closure" (which, interestingly, he says, appears for the first time in 1989 in news reports regarding crime victims and punishments). While some victims might want closure through capital punishment for their victimizers, others might want to attain closure by showing mercy. Alschuler would grant mercy in such cases, as long as the punishments requested by the victims are not excessively lenient.[22]

David Little, in response to Scheffer, questions the claim that punishing less than maximally entails failure to enforce accountability, and suggests that forgiveness could be allowed to remit punishment to some degree.[23] Kevin Jung also denies that mercy undermines justice, noting that it would then be hard to understand how, if justice is a moral requirement, mercy could be morally allowed even on the part of private individuals. He adds that both justice and mercy presuppose and affirm human capacities, for evil and for good respectively. One who uses mercy reminds herself that she, like the

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22. Alschuler, "A Place for Mercy," 92–99.

23. Little, "Critical Response to David Scheffer," 119, 122–24.

wrongdoer, still has the capacity for evil, and likewise affirms that the wrongdoer still has the capacity for good.[24]

William Schweiker understands mercy as something that is shown despite the lack of a justified claim, and that may or may not involve commutation of punishment or the subjective identification with the wrongdoer that characterizes forgiveness. He nevertheless connects mercy with human worth, something that, he says, justice cannot create, or even entirely protect. Schweiker concludes that mercy is at odds with the use of capital punishment.[25] Also focusing on the positive component of mercy, Paris insists that mercy requires justice, especially to protect society, but that criminals should still be shown mercy to give them the chance to develop morally good habits.[26]

Finally, Matthew Boulton regards mercy as above all the provision of care and reconciliation, with or without juridical leniency. He offers a commentary on the parable of the Good Samaritan. He notes that in the framework of the parable, the fact that the care for the victimized man was not provided by the Jewish leaders indicates that this care was "extra-ordinary"—and yet, the point of the parable is that such care is nevertheless mandatory. He adds that the text from Leviticus that Jesus is explicating in the parable, the command to love one's neighbor as oneself, contrasts love with vengeance; and that the pericope in which Jesus tells the parable follows shortly after one in which he is denied hospitality by Samaritans. Thus, in holding up the "Good Samaritan" as fulfilling the commandment, Jesus himself is providing loving care rather than vengeance, with the

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24. Jung, "Fallibility and Fragility," 207, 209–12, 218–20.

25. Schweiker, "Criminal Justice," 184–85, 198, 200.

26. Paris, "Justice and Mercy," 227–28.

possibility of reconciliation. Mercy and justice are not at odds, but rather contain each other. Mercy, though, is primary; it is "humanizing" in its focus not on desert and atonement but on human community.[27]

As will become clear, John Paul's understanding of mercy, grounded in Aquinas and in later thought, including Faustina's and also John Paul's own, is closest to that of Little, Schweiker, and Boulton. For John Paul, mercy goes beyond justice, and yet is, in its own way, a duty. It is a necessary element of respect for human dignity. To understand John Paul's thought on capital punishment, it will be necessary to show the details of his thought on mercy. The question, however, of whether mercy is at odds with the requirements of justice in the case of the very most grave crimes, as Scheffer suggests, deserves further brief examination at this point. Specifically in response to *Evangelium Vitae,* Weigel and Long expresses similar concerns.[28] On the other hand, Grisez has rejected the sorts of reasoning that lead to demands for the use of capital punishment for all or some murderers, or to the rejection of mercy on the grounds that it is unmerited.[29] The Church does not seem to have taught that there are some crimes that require the use of nothing less than capital punishment.[30]

One might add also a further argument in response to the claim that justice sometimes demands capital punishment. There are punishments that are presumably

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27. Boulton, "Samaritan Justice," 130–44.

28. Weigel, "*Evangelium Vitae* on Capital Punishment," 227–29; Long, "*Evangelium Vitae,*" 526–31, 551–52.

29. Grisez, *Way of the Lord Jesus,* 363.

30. See again the reviews of the history of Catholic thought/teaching in, e.g., Megivern, *The Death Penalty,* chaps. 1–7; Brugger, *Capital Punishment,* chaps. 3–6.

worse than "mere" death, such as death that is either preceded or accompanied by the intentional infliction of significant pain. Aquinas, as will be recalled, defends as morally licit in some cases such presumably painful punishments as maiming[31] and striking.[32] Many societies, including Catholic ones, have taken this conclusion for granted. One might wonder why, if some crimes demand death and nothing less as punishment, then some still worse crimes—say, torture-murders—would not demand something worse than death as punishment. Now, the Church has in fact since rejected torture, including as a punishment,[33] and has even apparently taught that it is intrinsically evil,[34] and hence unjust. So it might be argued that only the worst possible just punishment may be inflicted for the worst crimes, not the worst possible imaginable punishment. But while I think that the teaching that torture (but not "mere" capital punishment) is simply unjust is defensible, I also think, in light of the approval of this punishment by such as Aquinas, that the truth of this teaching should not be regarded as simply obvious[35] (and hence, defending it is far beyond my scope). At any rate, if there is a principled reason (justice) to reject altogether the use of the worst imaginable punishments (even for the very worst crimes), then it seems reasonable to be open to the possibility that there is a (different but analogous) principled reason (mercy) to reject sometimes the use of the worst of just punishments (even for the very worst crimes).

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31. STh II-II.65.1.

32. STh II-II.65.2.

33. CCC 2297–98; EV 3; CSD 404.

34. VS 80.

35. *Pace* Long, "*Evangelium Vitae,*" 528.

Aquinas as Background to John Paul on Mercy

With this range of views, and brief evaluation thereof, as contemporary context, one might move in the direction of an examination of John Paul II's position by looking at its possible background in Aquinas, in general an important source for John Paul, as noted in chapter 1. Aquinas treats mercy in a question within the "Treatise on Charity" in the Secunda Secundae (qq. 23–46): Mercy is among the interior acts of charity. What then are charity and, as Aquinas will say, its principal act? For Aquinas, charity is friendship between humans and God, beginning with his communication of his happiness to us.[36] It has as its object the divine good, under its special aspect of an object of happiness.[37] Strikingly, Aquinas holds that "if we make the impossible supposition that God were not man's good, He would not be man's reason for loving."[38] It is extended to our neighbors also, so that they may also be in God, in accordance with the capacity that they have in common with us[39] (but not to irrational creatures, who lack the capacity for this union with God).[40]

As discussed in the previous chapter, Aquinas argues that we must have charity for sinners, whose human nature also continues to have the capacity for happiness.[41] In a

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36. STh II-II.23.1.

37. STh II-II.23.4.

38. STh II-II.26.13 ad 3.

39. STh II-II.25.1.

40. STh II-II.25.3.

41. STh II-II.25.6.

similar fashion, he holds that we are to have charity for our enemies, who share our nature. More precisely, he holds that charity requires that "we should not exclude our enemies from the love given to our neighbor in general," "that we should be ready to love our enemies individually, if the necessity were to occur." He adds: "That man should actually do so, and love his enemy for God's sake, without it being necessary for him to do so, belongs to the perfection of charity" (something beyond its minimal requirements).[42]

The meaning of the "necessity" of which Aquinas speaks here is clarified somewhat when Aquinas considers whether we must show our enemies the outward signs of love. First, "some of the signs and favors of love are shown to our neighbors in general ... and the [minimal] fulfilment of the precept requires that we should show such like favors or signs of love towards our enemies." Second,

> there are other favors or signs of love, which one shows to certain persons in particular: and it is not necessary for salvation that we show our enemies such like favors and signs of love, except as regards being ready in our minds, for instance to come to their assistance in a case of urgency, according to Prov. xxv. 21: *If thy enemy be hungry, give him to eat; if he thirst, give him ... drink.* Outside cases of urgency, to show such like favors to an enemy belongs to the perfection of charity.[43]

In other words, it seems, the minimal requirements of charity do not demand that we go so far as to seek out opportunities to render less-than-urgent care to individual enemies (although the perfection of charity does demand this). But we must be ready, if we encounter an urgent case, to render such care. Such readiness would imply that we then

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42. STh II-II.25.8.

43. STh II-II.25.9.

actually render the care. One might further note that the type of "care" Aquinas describes by way of example is the provision of some of the needs of bodily life, food and drink.

For Aquinas, the principle act of charity is to love. With what sort of love? Aquinas has in mind a love that includes but is not limited to "goodwill," "because [this love] denotes a certain union of affections between the lover and the beloved, in as much as the lover deems the beloved as somewhat united to him, or belonging to him, and so tends towards him."[44] It is above all a love of God for himself, at least with respect to the final, formal, and efficient causes of that which we love; Aquinas does allow that with regard to material cause—"that which disposed us to love" the object of our love—God "can be loved for something else, because we are disposed by certain things to advance in His love, for instance, by favors bestowed by Him, by the rewards we hope to receive from Him, or even by the punishments which we are minded to avoid through Him."[45] Even aside from this latter distinction, what Aquinas says about love of God for himself might at first seem to contradict what he says about love of God as object of happiness, except that the happiness in question is not something distinct from God himself. So much does this love for God constitute charity that Aquinas argues that, in a way, "it is better to love one's enemy than one's friend, and this for two reasons": "because ... God is the only reason for loving one's enemy," and because love of enemies proves a stronger love for God.[46]

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44. STh II-II.27.2.

45. STh II-II.27.3.

46. STh II-II.27.7.

What, then, is mercy? Mercy is motivated by "corruptive or distressing evils," especially, but not only, those that befall someone accidently or even undeservedly.[47] Aquinas also addresses the objection: "It would seem that, properly speaking, evil is not the motive of mercy. For, as shown above [II-II.19.1; I-II.79.1 ad 4; I.48.6], fault is an evil rather than punishment. Now fault provokes indignation rather than mercy. Therefore evil does not excite mercy." Note that the objection takes for granted both that punishment—which Aquinas has already called a good—motivates mercy, and that fault—an evil—does not; if these presuppositions are correct, then apparently it is actually good rather than evil that motivates mercy. Aquinas responds: "Since ... fault may be, in a way, a punishment, through having something connected with it that is against the sinner's will, it may, in this respect, call for mercy."[48] Aquinas's response by no means denies that punishment calls for mercy; rather, he distinguishes a sense in which punishment can be considered evil, namely, by being against the will of the one punished. Nor does he deny that fault provokes indignation; rather, he adds that it can also provoke mercy, by being simultaneously punishment. This in fact is the conclusion at which Aquinas is ultimately aiming when he agrees that punishment motivates mercy and explains that this is because there is a sense in which punishment is evil. But the point regarding punishment as motivating mercy also stands on its own in a way that would seem applicable to all kinds of punishment—not only those that are intrinsic to a fault, but also those that are inflicted in response to a fault.

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47. STh II-II.30.1.

48. STh II-II.30.1 ad 1.

Aquinas goes on to explain that mercy involves "look[ing] upon another's distress as one's own," either "through union of the affections, which is the effect of love," or "through real union, for instance when another's evil comes near to us, so as to pass to us from him," even if only through people's "realiz[ation] that the same may happen to themselves."[49] It is a virtue, insofar as it is "a movement of the intellective appetite, in as much as one person's evil is displeasing to another," a "movement ... ruled in accordance with reason," that is, quoting Augustine, "when mercy is vouchsafed in such a way that justice is safeguarded, whether we give to the needy or forgive the repentant."[50] In fact, it is the greatest virtue, and this in two ways. First: "On itself, mercy takes precedence of other virtues, for it belongs to mercy to be bountiful to others, and, what is more, to succor others in their wants, which pertains chiefly to one who stands above. Hence mercy is accounted as being proper to God: and therein His omnipotence is declared to be chiefly manifested." Second—with a qualification—"with regard to its subject." Aquinas explains that "as regards man, who has God above him, charity which unites him to God, is greater than mercy, whereby he supplies the defects of his neighbor. But of all the virtues which relate to our neighbor, mercy is the greatest, even as its act surpasses all others, since it belongs to one who is higher and better to supply the defect of another, in so far as the latter is deficient."[51] These references to mercy as shown by one who is

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49. STh II-II.30.2.

50. STh II-II.30.3.

51. STh II-II.27.4.

"higher and better," however, need to be read in light of Aquinas' statement elsewhere that mercy rejects the appetite for subjection of others to oneself.[52]

Aquinas, then, in very brief summary, sees mercy as an act of charity, an act, therefore, that reflects our common capacity for happiness in union with God, as well as our common vulnerability to evil, even the evil of punishment; inasmuch as he sees acts of charity for those who are sinners and/or one's enemies as required when manifestly urgent, and sees mercy as part of charity and as a very great virtue when ruled by reason and not at odds with justice, it would seem that he sees mercy for sinners/enemies in manifest and urgent danger from evils like punishment as somehow necessary; inasmuch as he sees charity as having to do with our common capacity for union with God, it would seem that he sees mercy as also having the positive goal of restoring this communion. We may now turn to John Paul II's theology of mercy, and see the ways in which it agrees with Aquinas', and also builds upon it with the help of John Paul's other major source, Faustina, and his own reflections on the meaning of fatherhood, especially with regard to the relationship between mercy and conversion and the role of suffering in showing mercy.

Faustina as Source for John Paul II

The main source for John Paul's thought on the topic of mercy is his encyclical *Dives in Misericordia.* Weigel suggests that the encyclical brings together two strands: the understanding of mercy found in Faustina's spiritual diaries, and also the interest in

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52. Aquinas, *Lectura super Matthaeum* 5.2. This belongs to the authentic portion of the commentary; for the issues regarding authorship, see Torrell, *Saint Thomas Aquinas,* 1:56–57.

the meaning and importance of fatherhood that John Paul had also developed prior to his election as pope[53]—it will be noted that the encyclical begins, "It is 'God, who is rich in mercy' whom Jesus Christ has revealed to us as Father."[54] We will consider each of these in turn. In his own subsequent reflection, John Paul emphasizes Faustina as a source for the encyclical. He writes in his final book: "[T]he reflections offered in *Dives in Misericordia* were the fruit of my pastoral experience in Poland, especially in Kraków. That is where Saint Faustina Kowalska is buried, she who was chosen by Christ to be a particularly enlightened interpreter of the truth of Divine Mercy." He adds a very brief description of her life and the evil (Nazism, Communism) in her world, and a further statement of his sense of her importance for the Church.[55]

This is not the first indication of a connection in John Paul's mind between Faustina and the encyclical. In his homily at the beatification of Faustina and several others, he makes several mentions of mercy, in his introduction and conclusion as well as in the section specifically on Faustina; in addition to the mentions of mercy in the vernacular (the homily was delivered in several languages, including Italian and Polish), he also, in each of the same three sections of the homily, used the Latin phrase, *dives in misericordia.*[56] His homily for Faustina's canonization quotes and references the encyclical.[57]

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53. Weigel, *Witness to Hope,* 387.

54. DM 1.

55. MI, 5–6.

56. John Paul II, "Beatificazione" 1, 6, 8.

57. HC 2, 4.

Without mentioning *Dives in Misericordia,* John Paul also reflects elsewhere on his interest in Faustina: "During the Second World War, ... I often visited the grave of Sister Faustina ... Everything about her was extraordinary, impossible to foresee in such a simple girl." John Paul then lists several key points in her life and mentions the spread of the devotion she promoted, and adds: "When I became archbishop of Kraków, I asked Professor Father Ignacy Różycki to examine her writings. At first he didn't want to, but later he agreed, and went on to make a thorough study of the available documents. Finally he said, 'She's a wonderful mystic.'"[58] Weigel elaborates, explaining that in 1965, when Wojtyła was in Rome for Vatican II, Faustina's "'Divine Mercy' devotion was spreading throughout Poland even as her writings were coming under the theological suspicion of certain Roman authorities. The Archdiocese of Kraków was eager to propose Sister Faustina for beatification, and Wojtyła helped clear the doctrinal air with the Roman Curia so that Sister Faustina's cause could be introduced."[59]

Raymond Gawronski offers a helpful summary and analysis of Faustina's experiences and message. Her life included long periods of suffering and brief consolations. Her sufferings included her leaving home for religious life, the treatment she received at times from other sisters, physical ailments including tuberculosis, concealed stigmata, a painful death which was foretold to her when she entered religious life, interior suffering and the "dark night of the soul."[60] According to her visions as she recorded them, Jesus' suffering was expiatory; his suffering and death purchase God's

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58. John Paul II, *Rise, Let Us Be On Our Way,* 194.

59. Weigel, *Witness to Hope,* 158.

60. Gawronski, "My Name is Sacrifice," 820–24, 833, 838–39.

mercy; God sees in sinners Jesus as the Lamb slain.[61] His suffering can also be understood as inflicted by sinners; he suffers when sinners refuse to accept his mercy, is wounded by our sinfulness.[62] Human suffering is also part of his plan to offer mercy to sinners. Such suffering, united to Jesus', restrains God's wrath and purchases souls for God.[63] Faustina said of herself, "My name is sacrifice," and held that sacrifice and suffering are the first ways of spreading the message of God's mercy.[64] Above all, meditation on Jesus' own suffering helps save others, according to Faustina, but other kinds of suffering in union with Jesus' do so as well.[65]

More precisely, Faustina saw living for others, or loving others, as the most important way in which to bring God's mercy to them. Suffering, for Faustina, is part of this "living for," and love is greater than suffering. Suffering remains valuable and even essential, however. It is an essential part of dying to self so as to live for others. In the end, it is not the suffering itself that brings mercy, but rather the love that bears the suffering—but true love does bear suffering.[66] Faustina called for a love that identifies oneself with sinners.[67]

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61. Gawronski, "My Name is Sacrifice," 824, 827, 829.

62. Gawronski, "My Name is Sacrifice," 826, 828.

63. Gawronski, "My Name is Sacrifice," 827–28, 833.

64. Gawronski, "My Name is Sacrifice," 819, 826.

65. Gawronski, "My Name is Sacrifice," 835.

66. Gawronski, "My Name is Sacrifice," 831–33.

67. Gawronski, "My Name is Sacrifice," 834–35.

In his homilies for her beatification and canonization and then for Divine Mercy Sunday the year after her canonization, John Paul highlights what he apparently sees as a few of the most theologically significant aspects of Faustina's life and message. In the introduction and conclusion to the beatification homily, he links mercy with the gift of the resurrection and with the mission of faith and forgiveness that the resurrected Jesus gives to the Church.[68] When he briefly speaks specifically of Faustina, he recalls, as in the other reflections cited previously, some of the circumstances of her life. In particular, he refers to her "short life full of suffering," to the suffering in Europe and in the world during the twentieth century, and to the message of Divine Mercy and its popularity as "a sign of the times," and as the light of hope in this suffering world.[69]

John Paul expands on this at her canonization. Again, he refers to the difficult twentieth-century context of Faustina's life and mission, adding that her message remains relevant for the twenty-first and beyond.[70] Again and at greater length than at her beatification, he speaks of the gift of the Spirit—not only in the Upper Room after the resurrection but also in the water that, together with blood, flowed from Jesus' side on the cross, as depicted in the image Faustina saw and popularized—and so of forgiveness and peace.[71] He identifies mercy with the love recognizes the value of the person; that takes on the burdens of others, including by relieving material burdens; and that especially

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68. John Paul II, "Beatificazione" 1, 8.

69. John Paul II, "Beatificazione" 6.

70. HC 2–6, 8.

71. HC 1–3.

forgives sin and lifts the burden it imposes, and in these ways forms community.[72] John Paul emphasizes, quoting Faustina, that showing mercy entails accepting suffering.[73] He reminds us that we must practice mercy in order to receive it.[74]

The following year, 2001, John Paul gave his only Divine Mercy Sunday homily. He refers to Faustina by name, as well as to *Dives in Misericordia.* His message is similar to that at the canonization: mercy is an Easter gift; the Divine Mercy devotion is needed in our time; mercy is love that identifies with and sacrifices for sinners and so lifts burdens and brings peace, and that Christians are required to practice.[75] As Faustina had said that when God looks at sinners he sees in the Jesus as the Lamb slain for them, so, on this occasion, John Paul adds reference to the now-victorious sacrificial Lamb: "In the Messiah, crucified and risen, we recognize the features of the Lamb sacrificed on Golgotha, who implores forgiveness for his torturers and opens the gates of heaven to repentant sinners; we glimpse the face of the immortal King who now has 'the keys of Death and Hades.'"[76] He also speaks, as he had in *Dives in Misericordia* (as we will see), of our "'mercy' towards the Crucified One."[77] He does not elaborate on the meaning of this. It seems plausible to see an echo of Faustina's message about the importance of

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72. HC 2–6.

73. HC 6.

74. HC 4.

75. John Paul II, "Divine Mercy Sunday Homily" 2–6.

76. John Paul II, "Divine Mercy Sunday Homily" 1.

77. John Paul II, "Divine Mercy Sunday Homily" 2.

contemplation of Jesus' suffering, as well as a reference to Jesus' self-identification with the "least," with those most in need, as is made clear in the encyclical.

Finally, John Paul offers a further, dense reflection on Faustina and mercy in a writing several years later, his last book. He refers to Christ as having made satisfaction for our sins and as having risen in triumph over sin. He thus speaks of mercy, even more than justice, as limiting the evil in the world, and of the value of this message for the whole world.[78] In summary, he regards Faustina's message as of great importance for the world of our time, beginning in the twentieth century and also beyond. He focuses especially on mercy as involving suffering, primarily Christ's but also our own in union with Christ's, in order to lift the burdens under which others are suffering, including the burden of sin.

Mercy as Expression of Fatherhood in John Paul II

Weigel, as noted above, suggests that not only Faustina's message, but also John Paul's own experiences and thoughts regarding the theology of fatherhood, enter into the theology of mercy expressed in the encyclical *Dives in Misericordia.* He refers specifically[79] to Wojtyła's brief poetic "Reflections on Fatherhood," written in 1964.[80] Kenneth Schmitz links the encyclical with the longer play, *Radiation of Fatherhood,*

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78. MI, 54–55.

79. Weigel, *Witness to Hope,* 387.

80. For summary and discussion, see Buttiglione, *Karol Wojtyła,* 265–68.

written in the same year (but not published until 1979).[81] Schmitz also offers a substantial summary of and commentary on the play, with some mentions of the related work "Reflections" interwoven.[82] The most important passages for our purposes are two regarding the relationship between being a child and being a father. In the first of these, the character Adam addresses God: "After a long time I came to understand that you do not want me to be a father unless I become a child."[83] In the second, the character Mother addresses Adam: "Adam, accept the radiation of fatherhood; Adam, become a child. ... How does it happen that I see the father in you, even though you reject fatherhood? That I see the child in you, even though you do not want to be one?"[84] These passages indicate that the transformation into fatherhood requires a transformation into childhood. Furthermore, this transformation is meant to be understood as a radical and challenging one, involving a death to one's old self. Thus, Mother continues: "When a child is born, you are born in it anew, and I rejoice in that birth. At the same time—Adam, Adam—*I desire you to die in it.* I desire your death, and in that wish I find the very nucleus of life. Because of that wish, you bear a grudge against me, and that is why you cannot understand my love for you."[85]

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81. Schmitz, *At the Center of the Human Drama,* 118. Weigel, *Witness to Hope,* 218, discusses the play briefly, but does not connect it with the encyclical.

82. Schmitz, *At the Center of the Human Drama,* 19–29.

83. RF, 339.

84. RF, 362–63.

85. RF, 363.

Before further consideration of the meaning of "fatherhood" here and its importance for a variety of human relationships and hence for the theology of mercy in the world, it seems appropriate to address the question that might naturally arise regarding the role that "motherhood" might also play in John Paul's thought. In the play, Mother says to Adam, regarding the acceptance of fatherhood:[86]

> Do not be afraid. This must hurt. It is a pain like the pain of birth. A woman knows infinitely more about giving birth than a man. She knows it particularly through the suffering that accompanies childbearing. Still, motherhood is an expression of fatherhood. It must always go back to the father to take from him all that it expresses. In this consists the radiation of fatherhood.
>
> One returns to the father through the child. ... We return to the father through the child.

There is then a kind of reciprocity, according to John Paul, between fatherhood and motherhood; each is somehow learned from the other, even if not necessarily in the same way, and even if in this text there is the suggestion of a kind of primacy of fatherhood. This suggestion of primacy might reflect the fact that the play is at least as much about the relationship between God and human parents (in which, as in any divine-human relationship, the primacy will presumably be God's) as about the relationship between the human father and the human mother; the "fatherhood" of which motherhood is an expression might be God's. It is noteworthy in this connection that John Paul later writes "that the man's fatherhood always occurs through the woman's motherhood, and, vice versa, the woman's motherhood through the man's fatherhood."[87] Still more strikingly, he eventually writes regarding the human father that "in many ways he has to *learn* his own

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86. RF, 340–41.

87. Wojtyła, "Parenthood as a Community of Persons," 330.

'fatherhood' from the mother."[88] When John Paul is focusing on the human father-mother relationship, he emphasizes the equality or even primacy of motherhood.

What is the importance of this understanding of fatherhood—and motherhood—that is encapsulated in the statement that to become a father—or mother—one must become a child of God? Weigel writes: "John Paul II had been thinking about fatherhood for a long time. Life with his own father and with the unbroken prince, Cardinal Sapieha, had given him a profound experience of both familial and spiritual paternity. He thought of his own priesthood as a form of paternity."[89] The theme of spiritual paternity/maternity becomes one to which he then returns occasionally.[90] For John Paul, all men and women, whether or not they are physical (biological or adoptive) parents, are called to spiritual parenthood.

One might suggest that the loving care for others that is shown in mercy is an example of the practice of spiritual parenthood. John Paul writes, in fact: "The priest is the witness and instrument of divine mercy! How important in his life is the ministry of the confessional! It is in the confessional that *his spiritual fatherhood* is realized in the fullest way. ... It is necessary, however, that every priest at the service of his brothers and sisters in the confessional should experience this same divine mercy by going regularly to confession himself."[91] It would seem that any time a human person extends mercy to

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88. John Paul II, *Mulieris Dignitatem* 18.

89. Weigel, *Witness to Hope,* 387.

90. E.g., LR, 260–61; John Paul II, *Familaris Consortio* 16; idem, *Mulieris Dignitatem* 21.

91. John Paul II, *Gift and Mystery,* 86. Cf. e.g. idem, "Letter to Priests 2002" 4, 9; idem, "Letter to Priests 2001" 10–12.

another, we have an exercise of spiritual parenthood—and one that presupposes that the person exercising it has become a child of God. A key further conclusion that can now be drawn from this examination of the relationship between mercy and fatherhood/ parenthood, further substantiating an aspect of Faustina's message, is that human mercy, mercy extended by a child of God (perhaps through suffering like Christ's), is a reflection or transmission or "radiation" of God's own mercy, a making-present/active of that mercy in and through oneself, and in the one to whom mercy is being extended. This seems to build upon Aquinas' understanding of mercy, as summarized above, by making explicit some aspects of mercy that Aquinas perhaps does not make explicit.

John Paul's Full Teaching on Mercy: The Encyclical *Dives in Misericordia*

The encyclical *Dives in Misericordia*[92] was preceded a year and a half earlier by *Redemptor Hominis*; several statements in the earlier document must be examined briefly to complete our introduction to a reading of the later one. *Redemptor Hominis* takes as its starting point the teaching that "[t]he Redeemer of man, Jesus Christ, is the center of the universe and of history. ... Through the Incarnation God gave human life the dimension that he intended man to have from his first beginning."[93] Later, in the chapter on "The Mystery of the Redemption," John Paul quotes the words of the Pastoral Constitution on the Church in the Modern World *Gaudium et Spes*: "Rightly therefore does the Second Vatican Council teach: 'The truth is that only in the mystery of the Incarnate Word does

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92. For additional summary/commentary, see Nachef, *Mystery of the Trinity,* esp. chaps. 3–6, passim; Beigel, *Faith and Justice,* chap. 3.

93. RH 1.

the mystery of man take on light. For Adam, the first man, was a type of him who was to come (Rom 5:14), Christ the Lord. Christ the new Adam, in the very revelation of the mystery of the Father and of his love, *fully reveals man to himself* and brings to light his most high calling.'"[94] The next chapter of this dissertation will include further analysis of the meaning and implications of this teaching, especially as it applies to the relationship between mercy and justice. But it must be noted at this point that in *Redemptor Hominis,* John Paul, having referred to the role that the Incarnation plays as the revelation of the Father's love, goes on to specify that Jesus reveals the Father's love especially through his redemptive suffering and death, and adds: "This revelation of love is also described as mercy; and in man's history this revelation of love and mercy has taken a form and a name: that of Jesus Christ."[95]

This, in turn, is the starting point for *Dives in Misericordia*; in Weigel's words, "*Redemptor Hominis* 'grew' into ... *Dives in Misericordia.*"[96] This can be seen in the text of the latter. As noted earlier, John Paul begins his second encyclical: "It is 'God, who is rich in mercy' whom Jesus Christ has revealed to us as Father." He then explains:

> I devoted the encyclical *Redemptor hominis* to the truth about man, a truth that is revealed to us in its fullness and depth in Christ. A no less important need in these critical and difficult times impels me to draw attention once again in Christ to the countenance of the "Father of mercies and God of all comfort." We read in the Constitution *Gaudium et spes*: "Christ the new Adam ... fully reveals man to himself and brings to light his lofty calling," and does it "in the very revelation of the mystery of the Father and of his love." ...

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94. RH 8.

95. RH 9.

96. Weigel, *Witness to Hope,* 386.

For this reason it is now fitting to reflect on this mystery ...[97]

And he adds that "in Christ and through Christ, God also becomes especially visible in His mercy ... *[Christ] Himself, in a certain sense, is mercy.* To the person who sees it in Him—and finds it in Him—God becomes 'visible' in a particular way as the Father 'who is rich in mercy.'"[98] "[M]ercy is an indispensable dimension of love; it is as it were love's second name and, at the same time, the specific manner in which love is revealed and effected vis-a-vis the reality of the evil that is in the world, ... insinuating itself even into his heart and capable of causing him to 'perish in Gehenna.'"[99] These emphases on Christ's suffering/redemptive love as mercy, and the Father as the Father of mercy, are initial illustrations of the roles that Faustina's message regarding suffering love and John Paul's own theology of fatherhood will play in the encyclical on mercy.

As *Dives in Misericordia* continues, John Paul speaks of the scriptural witness to God's mercy. Among other things: "In the preaching of the prophets, *mercy* signifies *a special power of love*, which *prevails over the sin and infidelity* of the chosen people."[100] Similarly, in the New Testament it is made known that mercy "is an especially creative proof of the love which does not allow itself to be 'conquered by evil,' but overcomes 'evil with good.'"[101] "[T]he Son of God ... reveals himself as the inexhaustible source of

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97. DM 1.

98. DM 2.

99. DM 7.

100. DM 4.

101. DM 6.

mercy ... that ... is to be everlastingly confirmed as *more powerful than sin.*"[102] We see Faustina's understanding of the power of mercy.

How does mercy overcome evil? This is explained by a consideration of what exactly mercy is. Already in the Old Testament, mercy "does not pertain only to the notion of God but is something that characterizes the life of the whole people of Israel and each of its sons and daughters: *mercy is the content of intimacy with their Lord.*"[103] In a later reflection, John Paul likewise speaks of mercy as overcoming sin by restoring our love of God.[104] Mercy, John Paul writes in the encyclical, is "a participation in the very life of God." From this it follows that mercy "includes *the call* to man to share in the divine life by giving himself."[105] Hence, "Christ, in revealing the love-mercy of God, at the same time *demanded from people* that they should also be guided in their lives by love and mercy."[106] Indeed, "God ... *invites man to have 'mercy' on His only Son, the crucified one.* ... [I]s not this the position of Christ with regard to man when He says: 'As you did it to one of the least of these ... you did it to me'? Do not the words ... 'Blessed are the merciful, for they shall obtain mercy,' constitute, in a certain sense, a synthesis of

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102. DM 8.

103. DM 4.

104. MI, 7, 15. Cf. also Wojtyła, *Sign of Contradiction,* passim, for further indications of John Paul's interest in the Augustinian *amor Dei*/*amor sui* contrast.

105. DM 7.

106. DM 3.

the whole of the Good News, of the whole of the 'wonderful exchange'... contained therein?"[107]

The three connections, between fatherhood and mercy, between divine mercy and mercy shown by human persons, and between mercy received and mercy given, themselves all come together in the most pronounced way in John Paul's reflection on the parable of the Prodigal Son. John Paul writes regarding the parable: "Although the word 'mercy' does not appear, it nevertheless expresses the essence of the divine mercy in a particularly clear way."[108] And, "There is no doubt that in this simple but penetrating analogy, the figure of the Father reveals to us God as Father."[109] In the parable, the son has above all lost his dignity precisely as a son, and comes to realize this.[110] The father, however, is faithful to himself as father, and so also to his son, and restores the son to his position. A "good ... has been achieved thanks to a mysterious radiation of truth and love" (radiation of fatherhood). This in turn brings joy to the Father.[111]

John Paul comments:[112]

> At times it happens that ... *we see in mercy* above all *a relationship of inequality* between the one offering it and the one receiving it. And, in consequence, we are quick to deduce that mercy belittles the receiver, that it offends the dignity of man. The parable of the prodigal son shows that the reality *is different*: the relationship

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107. DM 8.

108. DM 5.

109. DM 6.

110. DM 5.

111. DM 6.

112. DM 6; cf. also 14.

> of mercy is based on the common experience of that good which is man, on the common experience of the dignity that is proper to him.

This emphasis on the mutuality of mercy might seem a denial or at least a qualification of Aquinas' treatment, noted above, of why mercy is in multiple ways the greatest virtue. But we have also noted that Aquinas sees mercy as at odds with the appetite for a position of superiority over others. It seems clear, furthermore, that John Paul agrees that mercy is and must be initiated by one of the two people—by the father. In view of these considerations, Aquinas' position seems to remain intact. We may continue to see John Paul's theology of mercy as building upon (rather than rejecting) Aquinas'.

The additional specific and practical point John Paul wishes to make, regarding the way in which mercy overcomes evil, is as follows: "The parable of the prodigal son expresses in a simple but profound way *the reality of conversion.* Conversion is the most concrete expression of the working of love and of the presence of mercy in the human world."[113] He repeats later in the encyclical: "Conversion to God always consists *in discovering His mercy* ... Conversion to God is always the fruit of the 'rediscovery' of the Father, who is rich in mercy."[114] Though it will likely seem reasonable to recognize that God's mercy is the cause of, rather than reward earned by, conversion, it might also seem unclear how the parable of the Prodigal Son demonstrates this. Does not the son have to recognize the evil he has done and figure out how that evil requires him to approach his father, before he can return and then experience the father's mercy? But this objection would, first of all, beg the question: How—in what light—is the Son to recognize what he

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113. DM 6.

114. DM 13.

has done to his relationship with his father? As John Paul suggests, this has not yet happened when the son focuses only on his physical poverty and hunger. But when the son decides to return and say to his father, "I have sinned ... I am no longer worthy to be called your son. Treat me as one of your hired servants," John Paul says that "the sense of lost dignity had matured ... the sense of that dignity that springs from the relationship of the son with the father."[115] It is the son's awareness of his earlier experiences of his father and his father's love that leads him to the conclusion that he cannot, in justice, ask to be treated as a son, but only as a servant. He has already begun to turn from evil to justice, to good.

Second, John Paul adds that the son "*had ... hurt and offended his father* by his whole conduct. ... And yet, after all, it was his own son who was involved, and such a relationship could never be altered or destroyed by any sort of behavior. The prodigal son is aware of this and it is precisely this awareness that shows him clearly the dignity which he has lost and which makes him honestly evaluate the position that he could still expect in his father's house."[116] Almost paradoxically, in other words, the son's awareness that the father-son relationship cannot simply be destroyed leads in turn to an awareness of the dignity that belongs to such a relationship and that he has therefore lost by offending his father. It is in light of the father's love, which initiates the relationship, that the son appreciates fully what he has done. Also, "this awareness" regarding the nature of the relationship "makes him honestly evaluate the position that he could still expect." This is not likely to be a repetition of the point that the son realizes that he cannot, in justice, ask

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115. DM 5.

116. DM 5.

to be treated as he was before he sinned. The point, rather, is that, even while knowing that he cannot deserve or ask to be treated as a son, he can expect to get more than he deserves and so asks for. He may not expect the details—the embrace, the ring and shoes, the banquet—but he has an expectation or hope of receiving, again, his father's love. Further evidence for this interpretation is provided by John Paul's briefer treatment of the same parable in his *Reconciliatio et Paenitentia,* which refers to the son's—to every (sinful) human being's—"desire to return to communion with his Father."[117] The son has some real desire for this, some real hope of attaining it. One can also compare John Paul's still later reflection on Psalm 51. He writes that the human person "accuses himself before God because he knows that sin contradicts the holiness of his Creator. At the same time, sinful man knows that God is infinite mercy, always ready to forgive and to restore the sinner to righteousness."[118]

In John Paul's theology of mercy, then, in *Dives in Misericordia* considered both in relation to itself and to its sources and to subsequent related texts, we see the use of mercy as intrinsic to our relationship with God, as a radiation of God's mercy, as potentially involving suffering, and as overcoming the sin of others. This takes us back to the references to human dignity and to mercy in *Evangelium Vitae* as keys to the understanding of the latter encyclical's treatment of capital punishment.

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117. John Paul II, *Reconciliatio et Paenitentia* 5.

118. MI, 54.

Application to Problem of Capital Punishment

It is especially because human dignity requires giving/receiving help in undergoing conversion, and because God's mercy brings about conversion, and because human mercy manifests God's, that John Paul calls for the use of mercy in punishing. This does not generate a norm absolutely forbidding the use of capital punishment. Again, mercy is a component of charity, and the political community must show charity to all of its members, and this requires protecting those members from the actions of someone whose past crimes provide evidence of future danger. John Paul therefore says that capital punishment ought not be used unless such protection of society requires it, not that it ought never be used. Furthermore, he makes the prudential judgment that such cases of necessity are "very rare, if not practically non-existent,"[119] but he does not claim that they are necessarily totally nonexistent. His statement earlier in the encyclical, "Modern society in fact has the means of effectively suppressing crime by rendering criminals harmless without definitively denying them the chance to reform,"[120] seems stronger, but two points should be kept in mind in interpreting it (in addition to the fact that it is an empirical/prudential judgment, not a theological one). First, he speaks of "modern society," which may not refer to the conditions obtaining in absolutely every place and situation in today's world. Second, he makes this statement in the context of his indication of approval of growing opposition to the death penalty. It is possible that he would see an essential link between the movement to abolish the death penalty, and the

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119. EV 56.

120. EV 27.

movement to continue to create the conditions in which such abolition would not endanger the public. In any case, John Paul would seem to allow the use of the death penalty in cases of real necessity, whether these are purely hypothetical or whether they remain real, if rare, in today's world. One thinks, for example, of situations that might arise for a time during war or other types of social breakdown.[121]

It is possible that—even when there is no real question of threat to public safety from future crimes by a convicted murderer, so that John Paul would require that society refrain from the use of capital punishment—this use of mercy will impose some cost on society. There may be financial cost. In fact, it is often pointed out that a capital case, through execution, costs more than a case culminating in life imprisonment. Whether fairness to the defendant/convict requires this,[122] and whether this will remain the case for the foreseeable future, is an open question. But even if the opposite became the case—even if secure life imprisonment became more expensive than execution, perhaps at least partly because sufficiently secure imprisonment would require spending more money on prison construction and guards—the proper theological conclusion would seem to be that society, together, ought to choose to bear the cost of mercy. Refraining from the use of capital punishment might also impose emotional costs on some people. Regardless of the security of the prison system—more specifically, the security of the life-imprisonment system relative to that of the capital-punishment system (people on trial for their lives and people already on death row have been known to escape; the relevant question for

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121. For more detail regarding the sorts of situations that might meet the criteria, see Langan, "Situating the Teaching," 220–21.

122. See, e.g., on the one hand McAdams, "Wisconsin Should Adopt the Death Penalty," 707–8; on the other, Dow, *Executed on a Technicality.*

criminological or penological study would seem to be not whether life imprisonment protects absolutely but whether it does so at least as well as capital punishment does)—some people might understandably, if unnecessarily, worry about threats to public safety. Loved ones of murder victims might understandably be pained that the killers still live. Again, in light of John Paul's teaching, the proper conclusion would be that we as a society ought to make the decision that we, together and as individuals, will bear these costs. Society might also choose to spend money to help victims' loved ones with their emotional and spiritual distress. Such costs are the costs of merciful and therefore full regard for human dignity, as the nature and importance of human dignity and of mercy have been articulated by John Paul II.

CHAPTER III
MERCY AS INTRINSIC TO THE REALIZATION OF JUSTICE

Justice and the Need for Mercy

John Paul II's explication of the meaning and value of mercy in itself, as this has been analyzed in chapter 2, seems to point in the direction of the applications to the issue of capital punishment that he suggests in *Evangelium Vitae* and that I have sketched out at the end of the last chapter. The discussion thus far, however, still leaves open some possible, and interrelated, questions regarding the state's obligation to use mercy in punishing, questions that must be answered in order to complete the theological explanation of John Paul's apparently categorical rejection of capital punishment when not needed for public safety. One question concerns the social, and more specifically political, applicability of the teaching regarding mercy, and/or its applicability to the case of punishment. Opinions on the part of those whose theology is sympathetic to or otherwise close to that of John Paul differ regarding this question. On the one hand, Hans Urs von Balthasar (writing prior to John Paul's pontificate) proposes: "The 'Golden Rule' ... in the mouth of Christ and in the context of the Sermon on the Mount can only be described as summing up the law." He develops the point: "In Matthew and (even more explicitly) in Luke, the 'Golden Rule' is situated in the context of the Beatitudes, the renunciation of retributive justice, the love of one's enemies, and the command to be 'perfect' and 'merciful' like the Father in heaven."[1] He thus relates the "law" to God's merciful gift and our proportionate response to God through our treatment of other

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1. Balthasar, "Nine Propositions," 85.

people, and continues: "In Christian terms, no personal or social ethics can be envisaged apart from God's effectual and bountiful invitation to man."[2] Balthasar, then, seems to relate the Beatitudes, as the fulfillment of the moral law, and especially "Blessed are the merciful ...," both to the question of retributive justice, that is, punishment, and to social morality.

Grisez, although he sees capital punishment as immoral even prior to any consideration of mercy, and hence does not see mercy as particularly relevant to the issue of capital punishment, nevertheless presents an understanding of mercy that in many ways draws explicitly from or otherwise echoes John Paul's (though Grisez places that understanding within the framework of his own moral theory).[3] He frequently relates mercy to forgiveness, and likewise speaks often of the "social" importance of mercy. While he does not say explicitly that society itself—as distinguished from individuals or voluntary associations within society—must be merciful in its actions, he speaks of the necessity of mercy for Christians in apparently categorical terms—most pointedly, he says, "Mercy is the justice of Jesus' kingdom,"[4] and repeats multiple times that "mercy is the justice of the kingdom"[5]—and he also says that "Christians today can fulfill [the responsibility to do works of mercy] as they should only by cooperation organized on a larger scale." Finally, Weigel's brief discussion of *Dives in Misericordia* includes the

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2. Balthasar, "Nine Propositions," 86.

3. See, e.g., Grisez, *Way of the Lord Jesus,* 1:213–14, 644–46, 670–71; 2:99, 189, 218–19, 310–13, 360–71, 456–58, 484–85.

4. Grisez, *Way of the Lord Jesus,* 2:365.

5. Grisez, *Way of the Lord Jesus,* 2:443, 762; 3:345, 878 n. 463.

recognition: "Mercy also has a corporate or social dimension. ... One path beyond modern 'unease' lies in building societies in which justice is opened to love and mercy."[6]

On the other hand, however, Weigel's writings[7] frequently propose an "Augustinian" social ethics, one emphasizing the reality of evil in this world, and the need for justice and the limits of love/mercy beyond justice as responses to this evil. Thus, he makes a point of endorsing a denial "that morality is identical with the Sermon on the Mount," referring to the Sermon as a statement of "the ethics of personal probity and interpersonal relationships," but not of "issues of statecraft."[8] Weigel is especially concerned with defending "just war,"[9] but the objection would presumably apply with regard to just capital punishment as well, especially in light of his interpretation of and reservations concerning John Paul's teaching on capital punishment, noted earlier.

Another question concerns whether, and why, mercy is really the only way of bringing about conversion, as John Paul seems to suggest in his use of the word "always": "Conversion to God always consists *in discovering His mercy* ... Conversion to God is always the fruit of the 'rediscovery' of the Father, who is rich in mercy."[10] As has also been noted, Aquinas suggests that facing death is especially likely to bring about conversion. Furthermore, as an extension of this point, it might be suggested that the prospect of facing capital punishment might encourage would-be murderers to undergo

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6. Weigel, *Witness to Hope,* 388.

7. Including his biography of John Paul: Weigel, *Witness to Hope,* 623.

8. Weigel, "Moral Clarity in a Time of War," 21.

9. See Weigel, *Tranquillitas Ordinis.*

10. DM 13; cf. 14.

conversion prior to the actual act of murder—in other words, might deter. The question of whether capital punishment does in fact deter crime would seem to be an empirical one, and is in fact a somewhat complex social-scientific question, one that cannot easily be assumed settled in favor of the view that there is no deterrent effect.[11]

Indeed, it might be argued, even if there is no actual conflict between justice and mercy—even if justice does not demand that which mercy forbids—nevertheless, justice does allow certain things, like capital punishment for murderers. If it is does not manifest the fullest possible respect for human dignity, justice at least seems to manifest minimal respect for human dignity, and furthermore to highlight the evil of crimes like murder, which manifest no respect for human dignity. Is it then coherent to speak of mercy as anything but supererogatory? And might justice not provide the lesson in human dignity most needed by would-be offenders and by convicted offenders alike?[12] And would not the obligation of the political community to protect all its members then allow, or even require, the use of capital punishment when just; would merciful refraining from its use not be optional at best, or forbidden at worst?

John Paul's statement about mercy and conversion does not, however, seem to leave room for the view that what he is saying is not relevant to the case of punishment by the state. If protection of the people from future crimes by a particular offender does not require her execution, then mercy must be shown, since only mercy can bring about

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11. The evidence is reviewed and discussed by McAdams, "Wisconsin Should Adopt the Death Penalty," 708–15.

12. See e.g. Berns, *For Capital Punishment,* chaps. 4–5; Weigel, "*Evangelium Vitae* on Capital Punishment," 229, both of whom emphasize this positive lesson (rather than fear) as a benefit provided by the use of (just) capital punishment; also Long, "*Evangelium Vitae,*" 526–31.

conversion, and since due respect for human dignity requires taking this into account. Why, however, is conversion "always" the fruit of mercy?

John Paul makes it still clearer that he is insisting on the use of mercy—not only justice—and by the political community—not only by individuals or groups such as voluntary associations—when he heads a section of his encyclical with the question, "Is Justice Enough"? His answer is, in a word, no—mercy is necessary not only for those to whom it is shown, but also those who show it; attempting to show justice without mercy leads to something less than justice. He says explicitly that he is referring to, among other things, the actions of "states" themselves. And he writes that

> it would be difficult not to notice that very often *programs which start from the idea of justice* and which ought to assist its fulfillment ... *in practice suffer from distortions*. Although they continue to appeal to the idea of justice, nevertheless experience shows that other negative forces have gained the upper hand over justice, such as spite, hatred and even cruelty. ... Not in vain did Christ challenge His listeners, faithful to the doctrine of the Old Testament, for their attitude which was manifested in the words: "An eye for an eye and a tooth for a tooth." This was the form of distortion of justice at that time; and today's forms continue to be modeled on it. ... The experience of the past and of our own time demonstrates that justice alone is not enough, that it can even lead to the negation and destruction of itself, if *that deeper power, which is love,* is not allowed to shape human life in its various dimensions. It has been precisely historical experience that, among other things, has led to the formulation of the saying: *summum ius, summa iniuria.* This statement does not detract from the value of justice and does not minimize the significance of the order that is based upon it; it only indicates, under another aspect, the need to draw from the powers of the spirit which condition the very order of justice, powers which are still more profound.[13]

One should note John Paul's apparent rejection here of the view that justice demands a maximally proportionate punishment for a crime, and hence that mercy is necessarily at odds with justice. More broadly, there is an echo here of a gloss on the Beatitude

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13. DM 12; cf. 14.

"Blessed are the merciful ...," recorded by Aquinas: "justice without mercy is cruelty."[14] But why is this true, and is it always true? John Paul's wording might suggest at first glance that his point is an empirical and therefore possibly limited one: "it would be difficult not to notice"; "experience shows"; "The experience of the past and of our own time"; "historical experience." However, he goes on to speak also of "that deeper power, which is love," and of "powers which are still more profound than justice." These sound like statements of moral principle, giving rise in turn to some empirical evidence. How exactly can they be explained?

One possible answer is that they simply reflect necessary aspects of our fallen condition. Grisez's interpretation seems to be along this line. He notes that John Paul writes later in the encyclical, in connection with similar statements about the need for mercy along with justice: "A world from which forgiveness was eliminated would be nothing but a world of cold and unfeeling justice, in the name of which each person would claim his or her own rights *vis-à-vis* others; the various kinds of selfishness latent in man would transform life and human society into a system of oppression of the weak by the strong, or into an arena of permanent strife between one group and another."[15] Grisez comments: "This is so because in any society, there will be a large body of persons unwilling to act fairly or in error about what fairness demands; hence, a general balance can be achieved only if some substantial group of persons is willing to make voluntary compensation to rectify unfairness."[16]

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14. Aquinas, *Catena Aurea in Matthaeum* 5:7.

15. DM 14.

16. Grisez, *Way of the Lord Jesus,* 1:646.

It is certainly true that, apart from the fall, there would be no evil, no selfishness, and hence there would be no need for mercy as a remedy for the effects of selfishness, others' and one's own. It is presumably also true that, apart from the fall, the question of justice without charity in any form would not arise, since all would live in accordance with the perfection of charity. But is it the case that the need to rectify the evils brought about by the fall is the only, or even the deepest, explanation for the need for charity (including mercy) in order to achieve justice? Grisez's explanation of John Paul's broad statement about justice's need for mercy solely in terms of his more specific statement about the reality of selfishness seems to have implications for one's understanding of the practical implications of the former. To what extent does John Paul's statement about justice's need for mercy contribute to an understanding of the moral necessity of a constant will to be merciful when possible? If Grisez's explanation of John Paul's statement is a complete explanation, then the integrity of justice would require that one will to show mercy at least sometimes, perhaps even often. But it is not clear that the integrity of justice would then require that each person will to show mercy whenever possible. For one thing, any given evil might be remedied by someone else's mercy instead of one's own. For another, it is not clear how mercy expressed specifically in the form of the infliction of a less-than-maximally-just punishment on criminals contributes to the remediation of the effects of unjust selfishness.

De Lubac as Background for John Paul II's Moral Thought

For John Paul II, there is in fact a deeper reason to think that, as a matter of principle, justice requires charity, and, hence, in our fallen world, mercy—specifically, a

constant will to show mercy, by individuals and by societies, including political society; and including the sort of mercy that tempers just punishment for criminals. This reason begins as *Dives in Misericordia* begins: with the teaching that Christ, by revealing the Father and the Father's love, fully reveals us human persons to ourselves. This teaching, again, is found in Vatican II's Pastoral Constitution. Five years later, Wojtyła singles it out as "a key point in the Council's thought."[17] Another six years later, he preaches on it in his Lenten retreat for Paul VI.[18] As we have seen, it then serves as a keynote for both of John Paul's first two encyclicals. It must now be added, however, that very similar wording can be found in theologian Henri de Lubac's first book, *Catholicism,* originally published in 1938: "By revealing the Father and by being revealed by him, Christ completes the revelation of man to himself."[19] It is necessary to investigate what de Lubac means by this, in the context of his broader theological anthropology; whether his position is correct, or at least plausible—more specifically, within the limited scope of this dissertation, whether brief but effective responses can be made to the most important recent objections to de Lubac's reading of Aquinas and understanding of the nature-grace relationship; whether John Paul II's thought ought to be interpreted in light of de Lubac's thought; and how doing so might help explain John Paul's understanding of the relationship between mercy and justice, and his position regarding capital punishment in particular. We may proceed first to the description of de Lubac's anthropology and the

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17. Wojtyła, *Sources of Renewal,* 75.

18. Wojtyła, *Sign of Contradiction,* 101–8, 117–18, 127, 137, 145.

19. Cath., 339.

interpretation of his statement about Christ's revelation of human persons to themselves in this context.

In summary, as will be elaborated, de Lubac holds that human persons have by our spiritual nature,[20] the nature that comes from being in the image of God, a capacity, and so a (negative, one might say) kind of desire (one that may not know its object, but that nonetheless precludes complete fulfillment of the person without that object) for—but not anything that could be considered already an actual beginning of—that graced supernatural relationship with God that culminates in the beatific vision. De Lubac's thought on this point of theological anthropology begins especially with his 1946 *Surnaturel* and several earlier articles that were incorporated into that book. What does not seem to be recognized by commentators is that the key aspects of this same anthropology can already be found in *Catholicism.* This is perhaps not especially surprising, since when de Lubac completed *Catholicism,* he was already long at work on some of the material that would make up *Surnaturel.*[21] *Catholicism* is subtitled, in the original French, *les aspects sociaux du dogme.* De Lubac argues, in short, that neither Catholicism properly understood, nor human society of any sort that contributes to the fulfillment rather than the annihilation of the individual person, is possible without the other. It would seem then that de Lubac's focus in his first book is on a different point of theological anthropology than that concerning the nature-grace relationship. However, upon close examination of *Catholicism,* de Lubac's contentions regarding the essentially

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20. For the meaning of "spirit" in de Lubac's anthropology, see esp. de Lubac, "Tripartite Anthropology."

21. Boersma, Nouvelle Théologie, 26 n. 114.

(for both Church and society) social nature of Catholicism turn out to be grounded in the understanding of the nature-grace relationship that becomes prominent and developed in other writings.

De Lubac begins *Catholicism* with a chapter on the human person as created in the image of God. He refers to this as the "principle ... on which rests the natural dignity of man." Being made in God's image, then, is part of our human nature. He then speaks of this imaging as a "mysterious participation in God."[22] What sort of participation? First, one that enables us to have God—more so than Adam—as the Father of our human race.[23] Second, a participation such that sin, being "infidelity" to the image, constitutes therefore a "breach with God" (as well as "a disruption of human unity").[24] Later in the same chapter, de Lubac resumes his analysis of the image of God by speaking of "the 'new man' that every Christian must 'put on' as he puts on Christ." De Lubac continues: "Sufficient attention has not been paid to the fact that mention of this 'new man' who is ever 'renewed' is, in the Epistle to the Colossians, coupled with a reference to the unique Image, 'the image of him that created him,' and to 'Christ ... all, and in all.'"[25] Taken together, these statements seem to indicate that for de Lubac, being—by nature—in the image of God means having—by nature—the capacity for the (renewing) union with God through Christ that makes us God's sons and daughters and that is disrupted by sin. This would seem to be the graced, supernatural union with God.

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22. Cath., 29.

23. Cath., 31.

24. Cath., 33.

25. Cath., 45.

In his next chapter, on the Church, de Lubac quotes Pascal: "People think that you can play on a man as you play on an organ. An organ he is in truth, but a strange and fitful one. He who can play only on an ordinary organ will produce no chords from this one." De Lubac comments: "But the Church can play on this organ because, like Christ, she 'knows what is in man,' because there is an intimate relationship between the dogma to which she adheres in all its mystery and human nature, infinitely mysterious in its turn."[26] Human nature is "infinitely mysterious"; it goes, one might say, to depths than can never be fully plumbed. But Christ, and the Church's dogma concerning Christ, match these depths. This statement concerning the correspondence between the Church and human nature is further elucidated in light of de Lubac's insistence, later in the chapter on the Church, on the Church as not simply an organized society, but also, and most deeply, the sacrament of Christ, the body of Christ, that which communicates a share in the life of Christ. If there is a correspondence between the Church, thus understood, and the mystery of human nature, then, it seems, this must be because the mystery of human nature consists in openness to union with Christ—to the supernatural.

In later chapters of *Catholicism,* de Lubac takes up the relationship between human unity in Christ, and the human person understood as more than a mere part of a larger whole. In his explanation of how unity in Christ, and no other kind of unity, respects persons, rather than destroying them by making them nothing more than parts, de Lubac refers again to the basic theological anthropology proposed in his first chapters. He begins by speaking of the relationship between the social-unitary (one body) and personalistic aspects of Catholicism as a paradox. He explains however: "This is not the

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26. Cath., 49.

only case in which revelation presents us with two assertions which seem at first unconnected or even contradictory: ...” Among the series of other such assertions he then lists is this: “the vision of God is a free gift, and yet the desire of it is at the very root of every soul.”[27]

De Lubac argues: “Man no more loses himself or disintegrates by becoming an integral part of that spiritual Body of which he must be a member than he does by submitting himself to God and uniting himself with him.”[28] That one does not lose oneself by submitting to union with God, then, functions as the premise in de Lubac’s argument that one does not lose oneself by entering into union with others in God. What is the justification for the premise? I suggest that at least part of the justification is what de Lubac has said in earlier chapters of *Catholicism* regarding the meaning of the image of God and regarding the human person as infinitely mysterious, and what he has said just pages earlier regarding the desire for God in the soul. For de Lubac, if—and only if—there is a natural capacity for graced supernatural union with God, then accepting this union does not cause the loss of the person. This supposition is confirmed by de Lubac’s treatment of what he regards as the intrinsic relationship between nature and finality in his later work *The Mystery of the Supernatural,*[29] which will be discussed further below. For de Lubac, to alter a being’s finality is to alter that being’s nature, that is, to cause the loss of that being.

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27. Cath., 327.

28. Cath., 330.

29. MS, chap. 4.

Shortly after de Lubac's statement about union with God and with others in God, he writes the words that are quoted nearly verbatim in *Gaudium et Spes*: "By revealing the Father and by being revealed by him, Christ completes the revelation of man to himself." In light of what has preceded, it is most sensible to take this as a further statement about the human person's natural capacity and desire for that supernatural union with God that comes through Christ. The revelation of Christ and the Father reveals us to ourselves because only in light of that revelation do we know that we have this capacity; only in light of that revelation do we know what alone will fully satisfy our desire. This seems to be further confirmed by what de Lubac says next: "By ... penetrating to the very depths of his being Christ makes man go deep down within himself, there to discover in a flash regions hitherto unsuspected."[30] There are already "regions" deep within the human person that Christ can enter, but that the person is unaware of until Christ has made this known to us. In this context, de Lubac resumes the theme of the image of God, referring to "[t]hat image of God, the image of the Word, which the incarnate Word restores and gives back to its glory." As in his chapter 1, de Lubac here again connects image of God (hence nature) with the (re)union that Christ accomplishes in us by grace.

De Lubac's first major work focusing explicitly on the nature-grace relationship is *Surnaturel.* As previously noted, the components of this book had been developed by de Lubac over a period of years. Balthasar writes regarding the book and the controversy that famously followed its publication: "With *Surnaturel* ..., a young David comes onto the field against the Goliath of the modern rationalization and reduction to logic of the

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30. Cath., 339.

Christian mystery. The sling deals a death blow, but the acolytes of the giant seize upon the champion and reduce him to silence for a long time. Not entirely without justification. The work, pieced together from many disparate preparatory studies, is not completely rounded out."[31] De Lubac thought it necessary to prepare "a little book" with further material on the nature-grace topic. He wrote the article "The Mystery of the Supernatural," a "complement" to *Surnaturel,* as the second part, and planned for the first part "a series of precise responses ... to the objections made to *Surnaturel.*" The first part of the book was never written as such at the time.[32] The article "The Mystery of the Supernatural" was, however, eventually expanded into the book of the same title, published in 1965 with a companion volume, *Augustinianism and Modern Theology,* together enlarging part of *Surnaturel,* on the history of the nature-grace problem.[33] These volumes together are the key source for de Lubac's developed theological anthropology.

Several points from these volumes and other writings by de Lubac need explicit mention in order to fill out what is found in *Catholicism* and to prepare for some response to key recent criticisms of de Lubac's anthropology. First, again, the natural desire for God of which de Lubac speaks is more a negative than a positive kind of desire. De Lubac does not hold that the human person knowingly desires graced supernatural union with God. He holds, rather, that apart from this union, the human person will always experience the "restless heart" of which Augustine speaks, but often without knowing

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31. Balthasar, *Theology of Henri de Lubac,* 63.

32. ASC, 62.

33. ASC, 123.

what (or who)—if anything (or anyone)—could provide rest.[34] De Lubac comments, closely echoing what he had written in *Catholicism*: "By revealing himself to us, Bérulle used to say, God 'has revealed us to ourselves.'"[35]

Second, for de Lubac, the natural desire is not any sort of positive ordering or movement toward God, or in any other way a beginning of supernatural life. There is an incommensurability, a disproportion, between nature (with its desire) and grace.[36] Hans Boersma recognizes how emphatic de Lubac is on this point, and quoting de Lubac's image of "two floors with no connection between them," comments: "This is exactly the sort of construct that de Lubac had been opposing and would continue to oppose throughout his life."[37] The possible suggestion of an internal contradiction is dubious. De Lubac's rejection of the idea of nature as complete on its own terms and of the supernatural as something merely superadded does not entail a rejection of every possible sort of use of the two-floor image. Boersma is however entirely correct regarding de Lubac's position concerning the very significant limitations of the natural desire.

Third, de Lubac regards Aquinas as a key source for understanding of the nature-grace relationship. De Lubac's work on this topic was motivated especially by a concern about whether Aquinas had been accurately represented by commentators.[38] His

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34. MS, chaps. 7–9, 11.

35. MS, 214.

36. MS, 82–86.

37. Boersma, Nouvelle Théologie, 97 n. 42.

38. See e.g. ASC, 35.

arguments draw very heavily from Aquinas.[39] In particular de Lubac does not fail to recognize explicitly that Aquinas uses the language of "obediential potency" to refer to nature's capacity for grace.[40] De Lubac's point rather is that for Aquinas—unlike, de Lubac thinks, for some of Aquinas' commentators—the expression "obediential potency" applies in this context only in an appropriately qualified sense, and not in such a way as to suggest that any sort of desire for grace is itself already the work of grace, rather than something natural.[41] Fourth, de Lubac does not deny that we human persons have what can be called ends that are proportionate to our natural powers. He argues, rather, that these cannot be correctly regarded as truly final ends for the human person. In the purely hypothetical case of a human nature not called and ordered by grace to supernatural union with God culminating in the vision of God, there would remain an unfulfilled if unknown desire, a "restless heart." Therefore (and one might say *a fortiori*) in the real case of a human nature thus called and ordered, attainment of purely natural ends does not fully satisfy. De Lubac argues that when Aquinas speaks of a purely natural beatitude, he consistently has in mind a purely temporal and this-worldly beatitude, not something that could be considered a final end for the human person.[42]

Fifth and finally, de Lubac insists that he is not rejecting the category of 'nature' in general or of 'human nature' in particular, at least as these were, in his reading, understood by Aquinas, in holding that we have a desire for something disproportionate

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39. See AMT and MS, passim.

40. AMT, 201, 203.

41. MS, 139 n. 36, 224–29.

42. De Lubac, "Duplex Hominis Beatitudo."

to our own power. He holds instead that for Aquinas, human nature is, as spiritual, a special case. It is truly a nature, even while open to something wholly transcendent.[43] De Lubac saw the need to reiterate this in one of his last works, even while continuing to maintain also the natural desire for God as he had always understood it.[44]

Response to Recent Criticism of de Lubac's Theological Anthropology

As has been noted, when de Lubac clearly advanced his thesis regarding nature and grace in *Surnaturel,* controversy followed. This controversy has not ceased; de Lubac continues to be criticized from multiple philosophical/theological perspectives. Most recently, there has been renewed and significant criticism from a neo-Scholastic perspective, defending against de Lubac either the very reading of Aquinas that was eventually developed by the Dominican commentatorial tradition—the reading to which de Lubac was especially responding, the reading that holds that the desire for God is elicited by grace—or at least a correction of this reading that is much less radical than de Lubac's. Some of this criticism has expressed some qualified appreciation for elements of de Lubac's anthropology. Henry Donneaud writes that "de Lubac ... has aided the reinvigoration of a formative principle of Christian, and therefore Thomist, anthropology, that of a human nature *capax Dei,* ontologically oriented toward the beatific vision. In this way ... he has contributed to drawing Thomism closer to its authentic sources," while also concluding that "his reading of St. Thomas, reduced to the univocity of this sole thesis, manifested a partiality not in conformity with the texts and doctrinal balance of St.

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43. MS, chaps. 6, 8.

44. De Lubac, *Brief Catechesis,* 11–20, 24–25, 34–40.

Thomas."[45] Others are more deeply critical. Long has published a series of essays, and most recently a monograph incorporating and adding to the last of those essays, attempting to rehabilitate a more traditional reading of Aquinas on nature-grace.[46] Lawrence Feingold's major contribution has occasioned considerable commentary (including by Long in his most recent work on the topic).[47]

De Lubac has also had his implicit or explicit defenders, including recent ones. Jean-Pierre Torrell's account of Aquinas on the desire for God is substantially the same as de Lubac's: the vision of God is the human person's only proper fulfillment and final beatitude; the desire for this vision is natural and indeed innate, even though it is not explicit in every person.[48] Nicholas Healy explicitly summarizes and responds to a number of recent criticisms, including Feingold's book and Long's essay on it.[49] Long's subsequent monograph in turn includes a lengthy note responding to Healy.[50] Because the most recent works of Long and other critics generally seem intended as glosses on

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45. Donneaud, "*Surnaturel* through the Fine-Tooth Comb," 57. See also the other essays in this volume, Bonino, ed., Surnaturel: *A Controversy.*

46. Beginning apparently with Long, "Obediential Potency"; also, e.g., idem, "Nicholas Lobkowicz," 68–72; idem, "Possibility of a Purely Natural End"; idem, "On the Loss, and the Recovery, of Nature"; most recently, idem, *Natura Pura.*

47. Feingold, *Natural Desire.* See also, e.g., the several other essays on the nature-grace topic, and occasioned by Feingold's book, that were published together with Long's "Obediential Potency" in the same issue of *Nova et Vetera* (5, no. 1 [2007]).

48. Torrell, *Saint Thomas Aquinas,* 2:342–48; cf. idem, "Nature and Grace," esp. 185.

49. Healy, "de Lubac on Nature and Grace."

50. Long, *Natura Pura,* 241–43 n. 64.

Feingold's "magisterial" treatment,[51] this limited response will focus on several of Feingold's key concerns.

Again, although de Lubac sees it as necessary to read Aquinas in the context of his predecessors and near-contemporaries, and hence draws heavily from writers of the patristic era and from several others of the scholastic era, he is explicitly concerned especially with rehabilitating what he sees as the correct reading of Aquinas himself (in other words, he wants to accomplish a *resourcement* of the ancient and medieval tradition, but especially of Aquinas himself, with the *resourcement* of the patristic sources partly a means to that end). Feingold, in turn, wishes to show that the commentatorial tradition that developed after Aquinas did not get Aquinas nearly so wrong as de Lubac thinks, both because that tradition does not always read Aquinas as de Lubac thought it did—as seeing in nature nothing more than a mere "non-repugnance" to grace—and because (again, in Feingold's view) the (nuanced) reading proposed by many in the commentatorial tradition is a more accurate reading than de Lubac's. This brief response to Feingold will prescind from the question of whether de Lubac has misread the Dominican commentators, since Feingold still sees a difference between their view, rightly understood, and de Lubac's. This response will likewise leave aside the question, raised by some of the critics, of whether attempting to read Aquinas in abstraction from that tradition amounts to a "historicism" that is problematic insofar as it fails to join in the "sapiential" or "speculative" project that Aquinas himself meant to further, and/or to

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51. See e.g. Long, *Natura Pura,* vii, 3, 10, etc.

recognize the intrinsically normative position of the commentators as those who received Aquinas' thought on behalf of the Church.[52]

A key series of Thomistic texts for de Lubac is the treatment of the end and felicity of the intellectual creature in the *Summa Contra Gentiles* III.[53] It is here that Aquinas seems to argue especially clearly and explicitly for a natural desire for the vision of God. Feingold argues that de Lubac's reading of these texts misses some important nuances in them. Feingold begins with III.25, "That to understand God is the end of every intellectual substance." He agrees that "[t]he argument based on the natural desire to see God ... receives ... its most extensive development" in the section of the *Summa Contra Gentiles* III that begins with chapter 25. He further prefaces his commentary: "This article does not yet specify the modality by which God must be known, but simply that knowledge of God *in some form* must comprise man's final end and beatitude."[54] He then proceeds to examine nos. 11–13 of the chapter, and makes a case that Aquinas is speaking here of a desire that is natural in the sense that our natural knowledge of creatures and then our natural recognition that they are effects of a cause leads, again naturally, to the desire to know that cause. The desire, then, is "elicited" rather than

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52. See e.g. Long, "Nicholas Lobkowicz"; White, review of *Natural Desire,* 465–67; Kromholtz, review of Nouvelle Théologie, 475.

53. See e.g. AMT, 125 n. 98, 187 n. 16, 189 n. 21; MS, 9 n. 43, 56 n. 7, 58 n. 13, etc.

54. Feingold, *Natural Desire,* 85.

"innate."[55] Feingold argues that the natural desire spoken of by Aquinas in later chapters is likewise elicited.[56]

Now, de Lubac expresses both sympathy with and reservations concerning the development of the "elicited" vs. "innate" distinction to express the sort of natural desire that we have for God, and generally resists the language of "elicited desire."[57] The reservations may reflect de Lubac's understanding of the affirmation of God as essential to the mind,[58] and in turn the influence on de Lubac of such thinkers as Blondel and Rousselot, whom de Lubac cites quite frequently.[59] Certainly, it is possible that de Lubac and his more proximate sources misread Aquinas on this point; of course, it is also possible that, even if they misread Aquinas, they are nonetheless correct about the reality under consideration. But even if the desire for God is naturally—but not supernaturally—elicited, this does not seem to require major correction of de Lubac. The elicited natural desire is nonetheless natural, and it would still correspond to an innate natural capacity. The distinction between "desire ... as a metaphysical and ontological appetite" (or as an "ontological[] orient[ation]") on the one hand, and as a "conscious and deliberate act" on

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55. Feingold, *Natural Desire,* 86, 88, 89, 90.

56. See esp. Feingold, *Natural Desire,* 92–95, on SCG III.50.5 (to which Feingold refers as no. 4).

57. E.g., AMT, 124–25.

58. E.g., de Lubac, *The Discovery of God,* 40–41, 105–8.

59. On Blondel, see also e.g. Bernardi, "Maurice Blondel and the Renewal"; Boersma, Nouvelle Théologie, 52–62. On Rousselot, McCool, *From Unity to Pluralism,* chaps. 2–3; Boersma, Nouvelle Théologie, 67–83.

the other,[60] may also be helpful here (as it will likewise be helpful in another context below). De Lubac, as has been noted, speaks of the natural desire as sometimes an unknown desire. An unknown or unconscious ontological desire might be innate, even if a conscious desire is only elicited.

More important here is Feingold's claim that *Summa Contra Gentiles* III.25 "does not yet specify the modality by which God must be known," in other words, that it need not be taken to refer to a desire for supernatural knowledge of God, for the vision of God. This seems extremely difficult to reconcile with what Aquinas goes on to say in the chapter:

> Now, the ultimate end of man, and of every intellectual substance, is called felicity or happiness, because this is what every intellectual substance desires as an ultimate end, and for its owns sake alone. Therefore, the ultimate happiness and felicity of every intellectual substance is to know God.
>
> And so, it is said in Matthew (5:8), "Blessed are the clean of heart, for they shall see God"; and in John (17:3): "This is eternal life, that they may know Thee, the only true God."[61]

Here Aquinas seems clearly to be connecting the natural desire for the existence of which he has argued, with the supernatural vision and knowledge of God, thereby indicating that he has in mind a natural desire (even if only an elicited one) for this supernatural knowledge, rather than one that would be fulfilled by a purely natural knowledge of God.

Feingold, however, thinks that there are other Thomistic texts that would contradict this reading.[62] He cites, for example, *Summa Theologiae* I-II.5.5 sc ("final

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60. Donneaud, Surnatural *through the Fine Tooth Comb,* 55, 57.

61. SCG III.25.14–15.

62. Feingold, *Natural Desire,* 109–10.

Happiness prepared for the saints, surpasses the intellect and will"), I-II.5.8 and ad 2 ("we may speak of Happiness according to its specific notion, as to that in which it consists. And thus all do not know Happiness; because they know not in what thing the general notion of happiness is found. And consequently, in this respect, not all desire it"; happiness "can be considered under other special aspects, either on the part of the operation itself, or on the part of the operating power, or on the part of the object; and thus the will does not tend thereto of necessity"), I-II.10.1 ad 3 ("under good in general are included many particular goods, to none of which is the will determined") I-II.62.3 (the intellect and will "fall short of the order of supernatural happiness"), I-II.114.2 ("everlasting life is a good exceeding the proportion of created nature; since it exceeds its knowledge and desire"). To these texts and the others Feingold cites we might add one from the *Summa Contra Gentiles* itself, in which Aquinas argues that grace causes faith and hope and thereby enables the human person to desire union with God.[63]

What needs to be recalled is that de Lubac has in mind a desire that, prior to grace, is present but unknown, not a conscious desire of the will. Again, for de Lubac, the point is more a negative than a positive one: apart from the vision of God, the human person would remain somehow unsatisfied, but would not know why. If a conscious willing to be united with God requires grace in order to exist (as well as, obviously, in order to be efficacious), this does not necessarily imply that human nature apart from grace would be truly satisfied. It seems at least plausible to take Aquinas' arguments for the natural desire, even if they refer primarily to an explicit (and perhaps naturally elicited rather than innate) desire of the intellect and will, to be compatible with and even presuppose the

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63. SCG III.153.

existence of the (perhaps innate) unknown (in Donneaud's terms, ontological) desire of which de Lubac speaks. This seems in fact a most plausible harmonization of, on the one hand, the affirmations of the natural desire for supernatural knowledge of God as the human person's final end and happiness, especially the very strong affirmation that "every intellect naturally desires the vision of the divine substance";[64] and, on the other hand, the statements that created nature cannot of itself consciously will (even inefficaciously) to obtain this knowledge and that therefore not all persons desire it specifically.

Feingold denies that this could be the case, but he does so based on an identification of "desire" with "appetite" or "inclination." He then points out that any sort of innate natural appetite for or inclination to the vision of God would be incompatible with various texts and principles in Aquinas.[65] However, first, de Lubac consistently speaks of "desire." Feingold points to one passage which he characterizes as follows: "De Lubac has suggested that St. Thomas indeed affirms a natural inclination or innate appetite for the vision of God, but not a *sufficient* appetite";[66] Feingold, again, rejects this as incoherent. But the passage (which Feingold quotes in a footnote) reads as follows: "If therefore the desire is truly a 'natural inclination,' it is not by that fact a 'sufficient' or 'proportionate' inclination ..."[67] It might be suggested that on the most fair reading of this text, what de Lubac suggests is not so much that there is a natural inclination, but that "if"

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64. SCG III.57.

65. Feingold, *Natural Desire,* 636.

66. Feingold, *Natural Desire,* 640.

67. MS, 86.

there is one, then it is an inclination only in a significantly qualified sense of that term. At any rate, it is possible that de Lubac uses the term "appetite" in a broader sense than Aquinas does. And second, Aquinas, for his part, clearly distinguishes among desire, inclination, and appetite: "the appetite is nothing else than an inclination of a person desirous of a thing towards that thing."[68] In other words, one might say, appetite equals desire plus inclination. Assuming that this is not meant as a tautology, appetite, desire, and inclination must then be distinct realities. And one can then further assume that it is possible for there to be desire without inclination or appetite. One cannot, then, point to problems that Aquinas would see in the notions of natural appetite for or inclination to God, in order to refute de Lubac's claim that Aquinas holds that there is a natural desire for God.

This takes us to what Feingold identifies as "[t]he great difficulty with [de Lubac's] position," namely, reconciling it with the gratuity of grace and the supernatural order.[69] Feingold seems in fact to find several ways in which de Lubac's understanding compromises this gratuity. First, he argues that for Aquinas, having a natural "appetite" for the vision of God would entail being naturally "ordered" to that vision.[70] In view of de Lubac's strongly consistent use of "desire" rather than "appetite," and Aquinas' distinction between the two, as well as de Lubac's insistence that there is no natural ordering to the supernatural, this argument seems irrelevant. But Feingold finds another inconsistency in de Lubac on the question of whether the natural desire is a natural

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68. STh I-II.8.1.

69. Feingold, *Natural Desire,* 26.

70. Feingold, *Natural Desire,* 641.

ordering, stemming from de Lubac's use of the term "finality." Feingold asserts: "Being ordered to an end according to one's nature, and having a finality imprinted on one's nature seem to be equivalent notions."[71] He adds: "The term 'finality' is not found in St. Thomas, but it seems that two close equivalents in the terminology of St. Thomas are the notions of being 'ordered' to an end and having a natural inclination or appetite for an end."[72] He refers to Aquinas' use of such expressions as "ordained towards an end."[73] But supposing that every object of an ordering or ordination is an end or finality, it does not follow that every finality is the object of such an ordering. In particular, the sort of finality that de Lubac has in mind—an openness, the fulfillment of which would alone fully satisfy the human person—is not an ordering. Feingold therefore does not substantiate the equivalence he claims.

Second, Feingold holds that if our nature includes an intrinsic supernatural finality, then "*our nature would itself be in some sense supernatural,* in virtue of St. Thomas's axiom that everything is ordered to its end in virtue of its form, as well as the principle invoked by de Lubac that 'finality is something intrinsic, affecting the depths of the being.'"[74] Here, Feingold again misses the distinction between finality and ordering. He also seems to miss part of the significance of a Thomistic text that he (implicitly) and

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71. Feingold, *Natural Desire,* 523.

72. Feingold, *Natural Desire,* 524.

73. STh I.25.2 ad 2.

74. Feingold, *Natural Desire,* 527–29.

Long (explicitly) attempt to deploy against de Lubac.[75] Aquinas responds to the objection "that the [human] soul is of the same species as an angel" because "each thing is ordained to its proper end by the nature of its species," and the soul and the angel both have the same end, "eternal happiness." His response: "This argument [regarding the connection between end and species] proceeds from the proximate and natural end. Eternal happiness is the ultimate and supernatural end."[76] We have an end that is proximate (not ultimate, and hence distinct from anything that could be called eternal happiness) and that is natural, in the sense that it can be obtained by our natural powers, as well as an end that is ultimate and supernatural, in the sense that it can only be received as grace. De Lubac nowhere denies this; as noted above, he affirms it, when read in proper context. Precisely because we have an end proportionate to our nature—albeit not a fully satisfying nor therefore an ultimate and eternal one, nor, as de Lubac also insists, one that fully defines our nature—we have a nature or species that is distinct from the divine nature. Our natural openness to and desire for a further, supernatural end does not make our nature supernatural. Put differently, our finality is not to be divine simply, but rather to participate as human persons (with our proximate end that distinguishes us from the angels) in the divine nature.

Third and finally, Feingold takes issue with an element of de Lubac's defense of the compatibility between his understanding of the natural finality/desire and the gratuity of the supernatural order, namely, de Lubac's rejection of the view that God could owe

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75. Feingold, *Natural Desire,* 525–26; Long, *Natura Pura,* 235 n. 36, 242–43 n. 64.

76. STh I.75.7 ad 1.

anything to a creature.[77] Feingold cites and discusses Aquinas' treatment of God's justice to his creatures, his giving to them what is their due. Feingold summarizes the point that requires further consideration here: "That which is due to the creature is nothing more than that the order of God (expressed in the notion of nature and the natural order) be realized in it."[78] He adds the comment: "For de Lubac, ... the vision of God stands to human nature in much the same way as those things which St. Thomas says are due to human nature, since it is spoken of as our 'essential finality,' and the desire for it is said to 'constitute' our nature."[79] Is Feingold correct in positing this equivalence? Here are the relevant words from Aquinas: "It is also due to a created thing that it should possess what is ordered to it; thus it is due to man to have hands, and that other animals should serve him."[80] Even if we were naturally ordered to the supernatural, it is not entirely clear that this would mean that it "is ordered" to us. And if, as de Lubac consistently and cogently maintains, we are not naturally ordered to the supernatural, despite naturally being open to and having a kind of desire for it, then it seems far from obvious that the supernatural is part of "what is ordered to" us, in the way in which having hands or being served by other animals is ordered to us. De Lubac's statements about God not being in debt to us need, I suggest, to be read in the context of de Lubac's insistence that the natural desire for the supernatural order is not itself any kind of ordering to or beginning of the supernatural.

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77. E.g., MS, 236–37.

78. Feingold, *Natural Desire,* 610–11.

79. Feingold, *Natural Desire,* 613.

80. STh I.21.1 ad 3.

De Lubac's Influence on John Paul II

If de Lubac's statement in *Catholicism* that Christ reveals us human persons to ourselves can be taken as a summary of his theological anthropology and especially of his position regarding the nature-grace relationship, and if this position is a plausible one at least as a reading of Aquinas (the question of whether Aquinas himself was correct regarding the human end will be further noted very briefly below), then this position might potentially be used in turn as part of an explanation of the meaning and theological plausibility of John Paul's thought. But when John Paul quotes Vatican II's near-verbatim use of de Lubac's statement, does John Paul mean to be taken as embracing de Lubac's anthropology? Consideration of this question can begin by asking in turn whether the Council's Pastoral Constitution can reasonably be read in light of de Lubac's thought.[81] In 1960, de Lubac was named a consulter to the Preparatory Theological Commission for the Council; this work continued until 1962, and de Lubac was then made a *peritus*.[82] In that capacity, he was involved in developing the schema that became the Pastoral Constitution. Furthermore, among the bishops with whom de Lubac worked on this project was Wojtyła. Several authors refer to their presence and work together.[83]

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81. Regarding GS's history and its theological anthropology, see, in addition to the other studies cited herein, Alberigo and Komonchak, eds., *History of Vatican II,* esp. vols. 1, 4, 5; Erhueh, *Vatican II: Image of God*; Ladaria, "Humanity in the Light of Christ"; Rulla, Imoda, and Ridick, "Anthropology of the Christian Vocation"; Kasper, "The Theological Anthropology of *Gaudium et Spes*"; MacNeil, *A Study of* Gaudium et Spes *19–22.*

82. ASC, 116–18.

83. For brief accounts and analyses of Wojtyła's involvement, including mention of de Lubac, see Weigel, *Witness to Hope,* 166–69; Buttiglione, *Karol Wojtyła,* 193–99. See also the references in Moeller, "History of the Constitution," to Wojtyła, at 38, 40,

De Lubac and John Paul themselves speak of each other in their respective memoirs on this period. De Lubac writes: "We worked side by side at the time of the arduous birth of the famous Schema 13, which ... became the Constitution *Gaudium et Spes.* ... He knew my works, and we were soon on good terms."[84] Weigel explains that Wojtyła may have become acquainted with some of de Lubac's thought while living at the Belgian College in Rome from 1946–48, and that he also read de Lubac in translation in two Polish Catholic periodicals in the subsequent years.[85] De Lubac continues with a brief description of their continuing communication as "friends" during the years after the Council;[86] Weigel refers to some moments in this communication.[87] John Paul himself, in one of his long responses to a journalist's questions that were published as a book, says regarding his time working on the schema, "I am particularly indebted to Father Yves Congar and to Father Henri De Lubac. I still remember today the words with which the latter encouraged me to persevere in the line of thought that I had taken up during the discussion. ... From that moment on I enjoyed a special friendship with Father De Lubac."[88] A decade later, he writes similarly: "Another Frenchman with whom I established a close friendship was the theologian Henri de Lubac, S.J., whom I myself, years later, made a cardinal. ... When ... I spoke on personalism, Father de Lubac came to

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44, 50, 63, and to de Lubac, at 63; and in Ratzinger, "Part I, Chapter 1," to de Lubac, 145.

84. ASC, 171.

85. Weigel, *Witness to Hope,* 82, 110.

86. ASC, 171–72.

87. Weigel, *Witness to Hope,* 143, 173–74, 227, 241, 334.

88. John Paul II, *Crossing the Threshold of Hope,* 159.

me and said, encouragingly: 'Yes, yes, yes, that's the way forward,' and this meant a great deal to me, as I was still relatively young."[89]

De Lubac's involvement as a *peritus,* and the intellectual kinship and broader friendship that quickly developed between him and one of the bishops working on the same schema, do not constitute conclusive proof that the near-quotation from de Lubac in the Pastoral Constitution must be understood as an affirmation or incorporation of de Lubac's anthropology by the Council. A number of interpreters, however, have read *Gaudium et Spes* in light of de Lubac's thought on the human person. Yves Congar refers to de Lubac's theology of nature and grace as a "very important" within "the basis of what *Gaudium et Spes* has to say on man's integral vocation."[90] Rocco Buttiglione thinks that Wojtyła, at least, among his contributions in the conciliar debate, "takes a position in favor of the 'nouvelle theologie.' In other words, he sets himself against the position which distinguishes an order of pure nature ... from an order of grace."[91] He adds: "It seems to me that I can show here a strict analogy between the position of Wojtyła and that of those postconciliar theologians, particularly Henri de Lubac and Hans Urs von Balthasar, who have developed similarly the theme of the nature-grace relation."[92] Others disagree, from various perspectives. Grisez does not contest de Lubac's reading of Aquinas, but contends that the Pastoral Constitution teaches a very different view of the

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89. RLU, 165.

90. Congar, "Part I, Chapter IV," 212.

91. Buttiglione, *Karol Wojtyła,* 195.

92. Buttiglione, *Karol Wojtyła,* 198.

human end, and that it is correct and Aquinas is wrong.[93] Peter Ryan, from a Grisezan perspective, and at greater length, pursues the argument against a reading of the Council's anthropology in light of de Lubac.[94] Robert Gotcher has in turn argued at length in favor of a reading of *Gaudium et Spes* in light of de Lubac, including a response to Ryan.[95] He includes a summary of de Lubac's own commentary on *Gaudium et Spes,* from the largely untranslated *Athéisme et sens de l'homme: Une double requête de Gaudium et Spes*.[96]

Still more recently, Guy Mansini has rehearsed some of the arguments against de Lubac's anthropology, ending with a discussion of several reasons why de Lubac's position nonetheless "remains," the last of which is *Gaudium et Spes* 22. Mansini asserts: "*Gaudium et spes* does not commit itself to any technical, ontological theses on the natural desire nor on the relation of nature to grace. The text asserts ... no more than a narrative unity between nature and grace. ... De Lubac, by contrast, in his theology, makes the connection metaphysical, ontological."[97] Gotcher's careful study of the history and content of the text of the Pastoral Constitution includes a caution along lines similar to those suggested in Mansini's reservation: "*GS* never explicitly confirmed a direct link to

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93. See e.g. Grisez, *Way of the Lord Jesus,* 1:38 n. 29, 809; more recently, idem, "The True Ultimate End."

94. Ryan, "Moral Action," chap. 5.

95. Gotcher, "Henri de Lubac and *Communio,*" esp. 214–35, and chap. 6.

96. Gotcher, "Henri de Lubac and *Communio,*" chap. 4. As noted by Gotcher, chap. 2, sect. 1 had been translated as de Lubac, "Total Meaning of Man"; more recently, chap. 2, sects. 1–4 have been (re)translated as de Lubac, "Total Meaning of God."

97. Mansini, "Abiding Significance," 618.

de Lubac's theology of the supernatural, limiting itself to an assertion of the *de facto* supernatural vocation of man."[98] Gotcher, however, suggests a compatibility between de Lubac and *Gaudium et Spes,* rather than a contrast—indeed, a closer compatibility than between other theological anthropologies and the Council's. If the history and the text, in its entirety, with (among other things) its strong and repeated emphasis on the world's need for Christ and the Gospel even in order to attain also its natural ends, of the Pastoral Constitution do not absolutely demand a reading in light of de Lubac's anthropology, they nevertheless best support such a reading.

There is still stronger reason to think that John Paul II has interpreted *Gaudium et Spes* as incorporating de Lubac's understanding of the nature-grace relationship. We have already seen that Wojtyła was involved in the composition of the document, that he was already familiar with de Lubac's thought, and that he was working and forming a personal relationship with de Lubac during the composition of the Pastoral Constitution. It might now be added that there is some indication that Wojtyła had already, years before the Council, formed a favorable disposition toward what he knew of de Lubac's anthropology. As Weigel notes, Wojtyła pursued his doctorate at the Angelicum in Rome, with Garrigou-Lagrange as his director. As is well known, Garrigou-Lagrange was among the foremost neo-Scholastic opponents of de Lubac's anthropology. Garrigou-Lagrange denied any sort of innate natural desire for the supernatural,[99] and famously wrote that the "new theology," explicitly including de Lubac's *Surnaturel,* returns to "modernism."[100]

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98. Gotcher, "Henri de Lubac and *Communio,*" 260.

99. See e.g. Garrigou-Lagrange, *Beatitude,* 101–7.

100. Garrigou-Lagrange, "La nouvelle théologie où va-t-elle?"

Weigel reports: "In his review of the dissertation, Garrigou criticized Wojtyła for not using the phrase 'divine object' of God. One assumes ... that Garrigou did not persuade Wojtyła of his point. ... [I]n his insistence on not treating God as a divine 'object,' even by way of analogy, Wojtyła was moving beyond the vocabulary, formulas, and intellectual categories that dominated the Angelicum during his two years there."

It would seem that this intellectual conflict between Garrigou and Wojtyła mirrors that between Garrigou and de Lubac. The reluctance to treat God as an "object" may reflect a conviction that the human person is by nature open to a relationship with God that, since God does in fact offer the grace of that relationship, can be accepted or rejected, but before which one cannot stand neutral as before an "object." We may recall in this context that Wojtyła would already at this point have been becoming familiar with de Lubac's thought, from conversations taking place at the Belgian College, where Wojtyła was living. Now, Weigel's "assum[ption] ... that Garrigou did not persuade Wojtyła" requires some further examination. It turns out that Wojtyła's dissertation does use the expression "divine object," and also the expression "obediential potency." However, the manner in which he uses these expressions is noteworthy. He writes: "The intellect has a certain passive or 'obediential' potency in relation to the supernatural, but it is only through the reception of a supernatural power that the natural cognitive power is supernaturally activated."[101] Wojtyła's choice of words here seems careful. He states that one cannot actually attain the supernatural by one's natural power. In this sense, one has an "'obediential' potency." He does not, however, state that the reception of a supernatural power is also necessary to bring about a desire for the supernatural. He thus

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101. Wojtyła, *Faith According to St. John of the Cross,* 72.

does not contradict de Lubac's position, according to which the expression "obediential potency" is legitimate but must not be taken to exclude the natural desire.

Wojtyła also writes that faith has God as its "object," and in this context speaks of "the divine object."[102] Here "object" seems to be used in a restricted sense, as distinct from "subject." One might compare Wojtyła's later words: "For a man is not only the subject, but can also be the object of an action."[103] Furthermore, Wojtyła adds another reference to "divine object" in his dissertation that makes this restricted sense clear. He speaks of "the part of the soul that is orientated to God and is capable of communicating with divinity as such, to the point of participating in the divine nature and life. Consequently, as a spiritual faculty the intellect has a capacity for the infinite ... Indeed, it cannot be satisfied and find rest in anything less than the infinite. Hence its natural desire for the divine object—to possess the divine essence in an intentional mode."[104] Here, the use of "divine object" is linked very closely with an affirmation of the natural desire to know God in his essence. Garrigou-Lagrange may, then, have persuaded Wojtyła to use the expression "divine object," but Wojtyła clearly indicates an openness, at minimum, to de Lubac's anthropology, and qualifies the expression "divine object" accordingly.

Following the Council, in his 1976 retreat for Paul VI, Wojtyła speaks of "[t]he tragedy of atheistic humanism—so brilliantly analysed by Père De Lubac," and footnotes de Lubac's book on *Gaudium et Spes.*[105] David Schindler contends that, in his papal

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102. Wojtyła, *Faith According to St. John of the Cross,* 241–42.

103. LR, 24.

104. Wojtyła, *Faith According to St. John of the Cross,* 242.

105. Wojtyła, *Sign of Contradiction,*16, 17 n. 3.

works, John Paul then propounds an interpretation of the Pastoral Constitution in which "image of God" is understood in accordance with de Lubac's thought.[106] Schindler proceeds to analyze in further depth a number of John Paul's writings, including some of his major writings on issues of socioeconomic morality,[107] and also including *Evangelium Vitae*,[108] as reflecting (among such other influences or interpretive keys as, most notably, Balthasar) de Lubac's anthropology. Welch, similarly, argues that a reading of the Pastoral Constitution in keeping with de Lubac's thought is advanced by John Paul in *Veritatis Splendor*.[109]

A close look at some especially key passages in *Redemptor Hominis* and *Evangelium Vitae* will help support these claims. John Paul's first encyclical quotes *Gaudium et Spes* 22 at length.[110] John Paul's comments prefacing the quotation include the following: "In Jesus Christ the visible world which God created for man—the world that, when sin entered, 'was subjected to futility'—recovers again its original link with the divine source of Wisdom and Love." This supernatural relationship with God that is restored by Christ is part of God's "original" plan. And outside of this plan, there is but "futility." John Paul's comments continue: "[T]he Second Vatican Council reached that most important point of the visible world that is man, by penetrating like Christ the depth

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106. Schindler, "Christology and the *Imago Dei*."

107. Schindler, *Heart of the World,* chaps. 2–3.

108. Schindler, "Christological Aesthetics." For a somewhat different proposal regarding the importance of de Lubac's anthropology for Christian moral/social thought, see Milbank, *Theology and Social Theory.*

109. Welch, "Synthesis of *Veritatis Splendor*."

110. RH 8.

of human consciousness and by making contact with the inward mystery of man, which in Biblical and non-Biblical language is expressed by the word 'heart.' Christ, the Redeemer of the world, is the one who penetrated in a unique unrepeatable way into the mystery of man and entered his 'heart.'" The quotation from the Council follows immediately. John Paul refers to "the inward mystery of man," which seems to echo de Lubac's reference to the human person as a mystery that only Christ can enter and reveal. The references to "heart" seem to suggest that this mystery is an openness within our nature itself.

John Paul proceeds to reflect on the divine love revealed by Christ, and refers to this love also as mercy, thus setting up the clear connection between this and his next encyclical, as noted in the previous chapter.[111] He then returns to the conciliar text and quotes it again, more briefly. This time the context is as follows: "Man cannot live without love. He remains a being that is incomprehensible for himself, his life is senseless, if love is not revealed to him, if he does not encounter love, if he does not experience it and make it his own, if he does not participate intimately in it. This, as has already been said, is why Christ the Redeemer 'fully reveals man to himself.'"[112] The statement that man is simply "incomprehensible" apart from the revelation of and participation in, specifically, the divine love embodied by Christ and uniting us, through him, to the Father, is particularly strong. Despite the lack of technical terminology such as "nature," when one considers this statement both in itself and in the context of John Paul's explicit openness to and appreciation of de Lubac's thought, it seems likely that it can reasonably be understood in light of de Lubac's anthropology.

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111. RH 9.

112. RH 10.

We have already begun, in the previous chapter, to look at the anthropology of *Evangelium Vitae,* and specifically at what John Paul says there about human dignity as reflecting the human person's openness to share in God's love through Christ. We may obtain a fuller and deeper picture of *Evangelium Vitae'*s anthropology by examining the section headed "Called ... to be conformed to the image of his Son."[113] In the first two of the three numbers of this section, John Paul reflects on the Genesis 1 and 2 creation narratives respectively. Genesis 1, of course, refers to the creation of human persons "in the image of God." John Paul comments: "*The life* which God offers to man *is a gift by which God shares something of himself with his creature.*" He refers to "this particular bond between man and God." This concerns our "spiritual faculties," and not only insofar as they can attain truth by their own natural powers. The human person is (quoting *Gaudium et Spes* 12 on "image of God") "capable of knowing and loving his creator." And the person is made for "much more than mere existence in time"; life "is a drive towards fullness of life; *it is the seed of an existence which transcends the very limits of time*"; the person is made for "eternity."[114] John Paul, then, interprets "image of God" as having to do with a bond whereby God gives something of himself to us, bringing about knowledge and love of him in eternity. He offers a similar interpretation elsewhere as well, in which "image of God" is linked with "covenant" and with "unique, exclusive, and unrepeatable relationship with God himself."[115] It is not absolutely impossible that the text could be read as referring here simply to naturally obtainable knowledge and love

113. EV 34–36.

114. EV 34.

115. TOB, 151.

of God, beginning here and continuing after bodily death. But the references to "gift" and "bond," and to "fullness" in "eternity" (compare, for example, the references to "eternal life" in what John Paul explicitly terms "supernatural" relationship with God in the opening sections of the encyclical)[116] seem to make this reading unlikely. What we have seen concerning John Paul's appreciation of de Lubac's thought seem to add to this sense that it is more likely that John Paul is relating "image of God" to natural desire for God.

With regard to Genesis 2, John Paul focuses on the metaphor of "*a divine breath* which *is breathed into man* so that he may come to life." He comments (seemingly using "imprint" to relate this passage to the one about the "image"): "The divine origin of this spirit of life explains the perennial dissatisfaction which man feels throughout his days on earth. Because he is made by God and bears within himself an indelible imprint of God, man is naturally drawn to God. When he heeds the deepest yearnings of the heart, every man must make his own the words of truth expressed by Saint Augustine: 'You have made us for yourself, O Lord, and our hearts are restless until they rest in you.'"[117] Again, it seems most likely that the combination of "man is naturally drawn to God" and the famous words of Augustine—which are important to de Lubac also—indicate that John Paul has in mind here a natural desire for a supernatural relationship with God. Here, too, we may find a similar text elsewhere in John Paul's corpus, in which Augustine's "restless heart" language is used to reconcile the proposition that human persons exist for their own sake, and the view that they are made to share in God's life.[118] This is exactly

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116. EV 1, 2.

117. EV 35.

118. John Paul II, *Letter to Families* 9.

de Lubac's point also regarding the importance of the natural desire as making union with God something that fulfills rather than destroying us.

John Paul turns in the final number of this section of the encyclical to the historical reality of sin and redemption. He says that in sin, the human being "deforms the image of God in his own person," and adds: "In the life of man, God's image shines forth anew and is again revealed in all its fullness at the coming of the Son of God in human flesh. 'Christ is the image of the invisible God' (*Col* 1:15) ... He is the perfect image of the Father."[119] John Paul's use of the Colossians reference to Christ as image of God echoes *Gaudium et Spes* 22, but his connecting of the Genesis and Colossians references to image of God is also very much reminiscent of de Lubac's similar argument in *Catholicism,* part of the basis for his understanding of our creation in the image of God as conferring upon us a natural openness to and desire for a supernatural relationship with God through Christ.

De Lubac's Anthropology and John Paul's Ethics of Capital Punishment

I suggest, then, that the weight of the evidence points toward the conclusion that John Paul's anthropology can most reasonably be interpreted in light of de Lubac's. What, however, does this have to do with the explication of John Paul's contentions that mercy is necessary to bring about the conversion of the sinner, and that attempting to show justice without mercy will result in something less than justice? The answer may first be stated in summary form. If nothing less than a graced supernatural relationship with God, culminating in the vision of God, will fully satisfy the human person, then any

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119. EV 36.

attempt to live in other than real openness to that relationship will not fully satisfy, and the "restless" person will not adequately appreciate the value of whatever good she was, at first, still willing to do. But real openness to accepting and living out that supernatural relationship entails the practice of charity, which in turn includes mercy. Therefore, attempting to live justly but not mercifully entails attempting to live in other than such openness. Therefore, even justice will not seem adequately comprehensible, meaningful, and valuable. Therefore, the person is likely, eventually, to discard justice in favor of mere self-gratification in its various forms.

This need for the practice of supernatural love is in fact suggested by de Lubac himself and in turn by John Paul in various places. As has already been noted, de Lubac's *Catholicism* concerns the relationship between Catholicism—the relationship with God through Christ that we have, according to de Lubac's understanding, in the Church—and human society. In various places in the book, de Lubac links our openness to a supernatural relationship with God, with our openness to relationships with other people as part of that relationship with God.[120] So, for instance, when de Lubac writes, "By revealing the Father and by being revealed by him, Christ completes the revelation of man to himself," he does so in the context of an explanation that part of what is revealed to us is our openness to a relationship with others: "The whole human race can find room in [one's] heart" (quoting Bonnet). And this relationship is one of "service."[121] De Lubac goes on to argue that the only way in which real and lasting human unity, with

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120. Rourke, "The Death Penalty," points especially to this aspect of de Lubac's thought in suggesting an interpretation of *Evangelium Vitae* similar to mine.

121. Cath., 340.

relationships of service, can be brought about, is in Christ. Any attempt to bring about unity in any other way will fail altogether; either the attempt at unification will "dissolve" and destroy the person (de Lubac refers to totalitarian ideologies), or individuals will live simply for themselves.[122] In *Mystery of the Supernatural,* de Lubac explicitly refers to the desire for God as the desire to enter into love.[123]

The Pastoral Constitution's partial rephrasing of de Lubac develops this point. Where de Lubac spoke of Christ's revealing of the Father and being revealed by him, *Gaudium et Spes* speaks of Christ's revelation of the Father and of the Father's love. The Council thus adds an explicit reference to divine love. The supernatural relationship with God that alone makes human persons fully known to themselves is a relationship of both knowledge and love. John Paul's focus on love in *Redemptor Hominis,* and then on mercy in *Dives in Misericordia,* further develops this point. His later papal writings on moral (and often social) issues, including and especially *Evangelium Vitae,* in turn pick up this point. *Evangelium Vitae* frames its treatment of such particular moral issues as abortion, euthanasia, and capital punishment within an analysis of what has gone wrong in a "culture of death,"[124] and of what needs to be put in its place. For John Paul, the opposite of a culture of death is sometimes termed simply a "culture of life,"[125] but he uses other expressions also as synonyms. These include "civilization of truth and love,"[126]

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122. Cath., 353–61.

123. MS, chap. 12.

124. EV 12, 19, 21, 24, 26, 28, 50, 64, 87, 95, 100.

125. EV passim.

126. EV 6, 105.

"civilization of love and life" or "of life and love,"[127] "culture of life and love,"[128] and "culture of love and solidarity."[129] Other references in the encyclical to "love" for the human person and human life are very frequent and numerous.

What kind of love does John Paul have in mind? We may begin to see the answer when we examine his treatment of what he considers the roots of the culture of death. He begins the first chapter of the encyclical with the reflection on the story of Cain and Abel that has been previously mentioned. When John Paul comments on Cain's killing of Abel, he highlights and interprets one element of the story as follows: "God ... *does not interrupt his dialogue with Cain.* He admonishes him ... *Envy and anger* have the upper hand over the Lord's warning."[130] John Paul thus suggests that God is, so to speak, reaching out to Cain, continuing to offer a relationship of "dialogue" with himself. Cain, in turning to his brother and killing him, is in this very same action turning away from this offer by God of a relationship with himself. The love that is rejected at the beginning of a culture of death, the love that may need to be restored in order to build something other than a culture of death, is perhaps the supernatural love with which God speaks to us and offers us a relationship with himself. John Paul mentions Cain again when he is discussing "the heart of the tragedy being experienced by modern man: *the eclipse of the sense of God and of man.*" Here John Paul refers to God as "Creator," but not only as Creator. He tells us that Cain is able to confess his fault only "because he is conscious of

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127. EV 27, 100.

128. EV 100.

129. EV 101.

130. EV 8.

being in the presence of God and before God's just judgment," and because the result of that judgment is that he will now "have to 'hide his face' from God.[131] This seems to indicate again that the evil of what Cain has done only comes fully to light when considered in connection with God's offer of a relationship with himself in which we are in his presence and see his face.

There are also positive indications in *Evangelium Vitae* that John Paul thinks that the only alternative to a culture of death is a culture of supernatural love. We have noted in the previous chapter, in the discussion of *Evangelium Vitae* on human dignity, John Paul's reference to Christ's gift to us of a "new heart" able to love as he loves. What must now be added is that the context for this reference is John Paul's caution that "it is so hard to remain faithful to the commandment 'You shall not kill' when the other 'words of life' (cf. *Acts* 7:38) with which this commandment is bound up are not observed. Detached from this wider framework, the commandment is destined to become nothing more than an obligation imposed from without, and very soon we begin to look for its limits and try to find mitigating factors and exceptions." Is John Paul referring simply or primarily to the remainder of the Decalogue? He clarifies: "Only when people are open to the fullness of the truth about God, man, and history will the words 'You shall not kill' shine forth once more as a good for man in himself and in his relations with others."[132] Undoubtedly, for John Paul this "fullness of the truth" includes the truth revealed by Christ about our call to supernatural life and love, of which John Paul then goes on to speak. All of this, in turn, is the context for John Paul's call for mercy as an essential

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131. EV 21.

132. EV 48.

aspect of charity. John Paul makes a point in *Evangelium Vitae* of mentioning that Christ's love "implores mercy."[133] This in turn includes mercy when possible for those who have committed such crimes as murder—when such mercy is consistent with the protection of society from future additional crimes by the murderer.

John Paul's anthropological principles and their moral implications explain not only why people as individuals and as society will fail even to be just unless they have a constant will to be merciful as possible (and therefore unless they are in fact merciful as possible), but also why mercy "always" needs to be experienced in order to bring about conversion. Conversion is the choice to cease doing evil and instead to do good. This choice presupposes apprehension of the value of doing good. This, in turn, presupposes seeing moral goodness as an element of the supernatural relationship with God that alone fully satisfies the human person. This, in turn, presupposes being aware of the real offer of such a relationship. This awareness is brought about by the experience of God's love-mercy. Now, it is true that mercy can take other forms besides the partial mitigation of just punishment. One might perhaps experience God's mercy as part of God's direct movement of the human spirit. One might experience that mercy through other kinds of actions by other people. But it would be, one might say, presumptuous for those who determine punishments to assume that criminals will be provided with these other kinds of experiences of mercy. Therefore, both so that they themselves will remain fully in the relationship with God that alone fully satisfies and coheres, and so that they will be fully respecting the dignity of others by acting in a way that takes into account the continued

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133. EV 25.

openness of those others to conversion and renewal, those who determine punishments must, as possible, act mercifully.[134]

This theological-anthropological explanation of the need for mercy can, finally, be briefly restated in another way, one that begins with reference to human freedom. Balthasar summarizes the point. The human person is free. Christianity especially makes known to us God's call to a share in his own infinite freedom.[135] If morality ceases to be fully Christian, specifically by our seeing the requirements of purely finite nature as its only starting point and refusing to practice a self-giving love that goes beyond these, then the eventual result is Nietzsche.[136] Why so? Because it is only by allowing God's supernatural self-gift to be the starting point for morality that we in turn allow morality to be something that is as much as possible freeing rather than enslaving and thus destructive.

The question of why freedom should be seen as compatible with the concern for others that morality is generally taken to dictate seems to be a reasonable one. It has at any rate remained an unavoidable one at least since Nietzsche,[137] who may in turn have been building upon developments that had been taking place over a period of centuries.[138]

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134. See also Portier, "Are We Really Serious," who argues that John Paul's acceptance of de Lubac's anthropology is similarly at work in his teachings regarding the limits of morally acceptable use of military force.

135. For summary of Balthasar on obedience and freedom—divine (Trinitarian) and human—see Steck, *Hans Urs von Balthasar,* 39–43, and chap. 3.

136. Balthasar, "Nine Propositions," 101–2.

137. See e.g. Nietzsche, *Genealogy of Morals,* Preface, nos. 3, 5–6; I, nos. 7–10, 13. For de Lubac on Nietzsche, see *The Drama of Atheist Humanism,* 42–129.

138. See Pinckaers, "Sources of Christian Ethics," 327–456.

John Paul has consistently criticized the view that morality and freedom, each rightly understood, are at odds with each other.[139] How is his position, that freedom and morality are harmonious, to be defended? One possible defense points out that to act morally is to rise above passions and other impulses.[140] If this is the only answer, however, it might be accused of begging the question of why one is less free when one really chooses to act in accord with those impulses, especially those that might be regarded by an ancient pagan or a Nietzsche as noble. Another defense would make reference to Aquinas' argument that our moral reasoning is a participation in God's reason; in this way, morality brings about union with God, who is also the source of all freedom.[141] But, it might be asked in response, what sort of union is this submission of our reason to God's? Is it one that, precisely as submission, even when in some sense freely chosen, actually destroys us and our freedom? De Lubac seems to suggest that this was also a concern for Nietzsche; it is, according to de Lubac, not so much that Nietzsche did not recognize the intelligibility of the world, including forms and ends, and therefore disbelieved in God, as that he saw God's creation of these realities as enslaving, and therefore willed the death of God and with him of these realities.[142]

A final possibility, the one suggested by de Lubac, is that God offers us a graced supernatural union with himself that corresponds to an openness and desire in our nature. This is a union that, more obviously than any other kind of union with God, completes

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139. E.g., LR, 115–17, 135–36; VS 17–18, 31–53, 84–87; EV 18–20.

140. VS 42.

141. STh I-II.91.2 and ad 3; VS 38–41.

142. De Lubac, *The Drama of Atheist Humanism,* 62–63.

rather than destroying us. As it is more authentically interior, it is more attractive as well as more demanding.[143] John Paul also suggests that it is in light of this desire and offer that freedom and morality are most obviously reconciled. Thus, he speaks of Christ's invitation to "follow me," and comments: "This is not a matter only of disposing oneself to hear a teaching and obediently accepting a commandment. More radically, it involves *holding fast to the very person of Jesus,* partaking of his life and his destiny, sharing in his free and loving obedience to the will of the Father. ... And ... thus to imitate the Son, 'the image of the invisible God' (Col 1:15), means to imitate the Father."[144] Likewise: "*The Crucified Christ* ... calls his disciples to share in his freedom."[145] Likewise, in *Evangelium Vitae*: the law of love that comes with the gift of a new heart, the gift that restores the relationship with God which we desired from the beginning, is "the law of freedom."[146] This law of freedom/charity, including mercy, is, according to John Paul, the law that must be followed by society and modeled to those in need of conversion in order to build something other than a culture of death.

None of this means that natural-law reasoning is in the end invalid as a way of deriving moral norms. Nor is this to deny that acting virtuously, that is, according to reason, is, precisely as such, humanly fulfilling. The point, rather, is that what our unaided reason can grasp about moral or other truths is not perfectly fulfilling; it does not have the character of a truly final end. Natural-law reasoning needs to be done in the

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143. De Lubac, "A Meditation on the Principle of the Moral Life," 419–20.

144. VS 19.

145. VS 85.

146. EV 49.

context of a recognition of the law of supernatural love and as a way of trying to understand some of the requirements of that love. But there may be requirements of that law that go beyond what reason alone can make fully known, while not contradicting reason. I am suggesting that the need for mercy, and consequent rejection of capital punishment when not necessary, is an example of such a requirement.

CHAPTER IV
MERCY, FAITH AND REASON, AND POLITICS

Catholic Social Teaching and Evangelization

We have seen that John Paul both analyzes the nature and importance of mercy in light of Christian revelation as a participation in the supernatural love of God, and calls for the exercise of mercy by the political community. This, then, raises the question of whether John Paul is calling upon the political community to act in accordance with a norm that, while not contradicting reason, is nevertheless not knowable by reason alone, but only with the help of revelation. The point is not that the political community might be asked to enforce the Christian faith on its individual members; the point, rather, is that it might be asked to act together in a distinctively Christian way. But this seems like an urgent question regarding the nature and content of Catholic teaching about the political community. This concluding chapter will suggest that in John Paul's plausible understanding, mercy is something to the value of which unaided moral reasoning can point, even though revelation is necessary for a full grasp of the meaning and necessity of mercy.

It is clear that John Paul repeatedly and insistently called for the evangelization of persons and of societies. He is perhaps especially well known for his call for a "new evangelization" as a response to dechristianization, as well as evangelization of those who have never been Christian and continued pastoral care of those who are already

evangelized and are living as faithful Christians.[1] I suggest that John Paul's use of the title *Evangelium Vitae* for his encyclical on respect for human life needs to be understood in this context. The distinctively theological message of the encyclical regarding the human person and morality, including but by no means limited to the call for mercy, is a message that can only be proclaimed as part of a broader program of evangelization. John Paul begins *Evangelium Vitae* with references to Jesus as revealing the meaning and value of life, as noted previously.[2] The encyclical's final chapter, on building a culture of life, is organized around a threefold call to "proclaim," "celebrate," and "serve" the Gospel of life. When John Paul treats the theme of "proclaiming the Gospel of life," he begins by emphasizing the necessity of "*proclaim[ing] Jesus*." He adds that making known the Gospel of life "involves above all proclaiming *the core* of this Gospel. It is the proclamation of a living God who is close to us, who calls us to profound communion with himself and awakens in us the certain hope of eternal life. ... It is the proclamation that Jesus has a unique relationship with every person." This seems to be the sort of proclamation that is taking place in the encyclical itself, from its first sections. It is only then that he adds: "It also involves making clear all *the consequences* of this Gospel" for morality. He speaks of this evangelization as something that must take place in catechesis and preaching, among other contexts.[3]

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1. See esp. John Paul II, *Redemptoris Missio*; also, e.g., idem, *Ecclesia in America,* chap. 6; idem, *Novo Millennio Ineunte* 40–41. For discussion, see Schindler, "Reorienting the Church."

2. EV 1–2.

3. EV 80–82.

This is not the only text in which John Paul suggests a close relationship between Christian evangelization and moral teaching, including teaching regarding social morality. In the concluding chapter of one of his major documents on socioeconomic morality, John Paul states that "the Church's *social teaching* is itself a valid *instrument of evangelization.*" All authentic moral truths are in some sense part of the Gospel, of course, and hence teaching them contributes to the teaching of the Gospel. But John Paul means more than this; he draws his conclusion regarding social teaching and evangelization from the premise that "a person's true identity is only revealed to him through faith, and it is precisely from faith that the Church's social teaching begins. While drawing upon all the contributions made by the sciences and philosophy, her social teaching is aimed at helping everyone on the path of salvation." And after the statement regarding social teaching and evangelization, he continues: "As such, [Catholic social teaching] proclaims God and his mystery of salvation in Christ to every human being, and for that very reason reveals man to himself. In this light, and only in this light, does it concern itself with everything else."[4] He adds further: "The Church receives 'the meaning of the person' from Divine Revelation."[5]

One finds a similar message in John Paul's encyclical on issues in fundamental moral theology. The middle chapter of *Veritatis Splendor,* which deals in detail with contemporary technical controversies, is framed by chapters focusing constantly and explicitly on Christ. John Paul teaches that evangelization involves moral teaching, not only because the Gospel is incomplete without morality, but also because morality is

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4. CA 54.

5. CA 55.

incomplete and obscure without the Gospel.[6] He seems to have in mind social and even "political," as well as individual, morality.[7] None of this should seem altogether surprising in light of my explanation in chapter 3 of John Paul's understanding of the human person and morality. But it again raises the question of whether the political community is, as such, to be expected to act on the basis of distinctively Christian moral norms.

Catholic Social Teaching and Human Moral Reasoning

John Paul does seem to hold that the full meaning and importance of the moral norms that can be developed by natural-law moral reasoning, such as the injustice and hence intrinsic evil of intentional killing of innocent human persons, cannot be appreciated except in the light of Christ's revelation of human persons to themselves, and that, therefore, moral teaching must be accompanied by evangelization. Thus there is a necessary and intrinsic link between Catholic social (and other moral) teaching and the call for Christian evangelization of peoples. He does, further, seem to hold that there are some specific moral norms, such as the need for mercy, that are made fully known only by Christ, but that must be lived in order to accept that union with Christ that gives meaning to morality as a whole.[8] But he does not necessarily hold that reason can do

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6. VS 106–7.

7. VS 98–99.

8. On the broad question of what Christianity might contribute to morality, see the essays in Curran and McCormick, eds., *The Distinctiveness of Christian Ethics.* For further review of the question and another proposed answer, see Melina, "Christ and the Dynamism of Action." For considerable further development, see idem, *Sharing in Christ's Virtues* and *The Epiphany of Love.*

nothing whatsoever to point us in the direction of a recognition of these latter norms, even if reason cannot make it fully known that they are essential (rather than good but supererogatory), or make us aware of their full significance for human flourishing.

John Paul has defended at length the validity and importance of natural-law moral reasoning.[9] He has appealed briefly to such reasoning in *Evangelium Vitae* when stating moral norms against the intentional killing of the innocent in general and against abortion and euthanasia in particular.[10] More broadly, at the beginning of John Paul's second chapter, on "The Christian message concerning life," after he writes, "In Christ, the *Gospel of life* is definitely proclaimed and fully given," he adds: "This is the Gospel which, ... indeed written in the heart of every man and woman, has echoed in every conscience 'from the beginning,' from the time of creation itself, in such a way that ... *it can also be known in its essential traits by human reason.*"[11] He does not say whether or not these "essential traits" include the call to a love that goes beyond justice for the innocent and that includes mercy for the guilty. But the possibility that they do include this call needs to be explored.

John Paul offers what may be a hint that they do when he calls the movement against capital punishment a sign of hope.[12] Many of those who are involved in this movement obviously do have a distinctively Judeo-Christian motivation for their opposition to capital punishment, but not all of them do. Although the point cannot be

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9. VS 42–53.

10. EV 57, 62, 65.

11. EV 29.

12. EV 27.

demonstrated conclusively, it would seem at least somewhat likely that if John Paul commends this movement, he does so not only because he thinks that its practical conclusion, that the death penalty ought not be used, happens to be correct, but also because he thinks that its members are in a position to have in some measure, even if only a partial one, a grasp of the truth about the human person that underlies this conclusion. But he is also surely aware that some of these members lack a distinctively Judeo-Christian faith perspective. It would seem perhaps to follow that John Paul thinks that even those who are operating without the help of this faith, who are operating solely with unaided human reason, are nevertheless able to grasp some of the truth about why the death penalty ought to be rejected when not strictly necessary to protect against further crimes by the convict.

One might also consider the possible place that John Paul's successor, Pope Benedict XVI, might occupy as an authentic interpreter of Catholic social teaching and of John Paul's in particular. Benedict has made some explicit statements about the respective roles of reason and faith in Catholic moral and social teaching. Already in his pre-papal thought, he mentions the needs for the "basic insights of human reason" concerning morality to be "purified, deepened and broadened through contact with the way of faith."[13] As pope, referring more specifically to political morality, he writes: "The State must ... face the ... question: what is justice? The problem is one of practical reason; but if reason is to be exercised properly, it must undergo constant purification, since it can never be completely free of the danger of a certain ethical blindness caused by the dazzling effect of power and special interests." Does this mean, however, that moral

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13. Ratzinger, "The Church's Teaching Authority," 72.

norms that reason cannot in principle derive should govern the action of the political community?

Benedict clarifies as he adds: "Here politics and faith meet. Faith ... is ... a purifying force for reason itself. ... This is where Catholic social doctrine has its place: it has no intention of giving the Church power over the State. Even less is it an attempt to impose on those who do not share the faith ways of thinking and modes of conduct proper to faith. Its aim is simply to help purify reason and to contribute, here and now, to the acknowledgment and attainment of what is just." And finally: "The Church's social teaching argues on the basis of reason and natural law, namely, on the basis of what is in accord with the nature of every human being."[14] He repeats the point, referring to "the world of politics" as "the sphere of the autonomous use of reason," albeit a sphere that needs to be open to faith's help in "the purification of reason." He does say, still further, that "it still remains true that charity must animate the entire lives of the lay faithful and therefore also their political activity, lived as 'social charity,'"[15] but this needs to be read in the context of his statements just prior about faith (the beginning of charity) as helping the political community in the attainment of justice, and justice as discerned by autonomous reason once it has been purified with the help of faith. It would seem, then, that despite his sense of the *de facto* importance of faith for moral reasoning in a fallen world, Benedict is teaching that, at least as far as moral reasoning in the political context is concerned, such reasoning is, considered in itself, autonomous human reasoning. He is

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14. DCE 28.

15. DCE 29.

teaching that the Church does not call upon the political community to act in accordance with moral norms that human reason cannot, at least in principle, demonstrate.

Benedict's thoughts in a later encyclical are similar: *"Reason always stands in need of being purified by faith*: this also holds true for political reason, which must not consider itself omnipotent."[16] Again, it seems that Benedict's view is that Catholic social teaching does not add to the content of morality, as this can be known by reason, but rather brings faith to bear on reason so as to purify it. If he is correct about the role of faith in Catholic social teaching, and in particular if what he says is applicable to John Paul's teaching on capital punishment in particular, then we have reason to expect to find some basis in human moral reasoning for what John Paul seems to present primarily as a conclusion from Christian faith regarding the person and mission of Christ.

The Need for Love: Moral Reasoning in a Fallen World

I would like to attempt to outline how natural-law reasoning might point toward the goodness of at least some kind of generous love that goes beyond the minimal requirements of justice, and therefore perhaps even to the goodness of mercy. I think that this can in fact be done in at least two converging ways. The first of these ways refers again to the point that Grisez makes, as noted in the previous chapter, in his interpretation of John Paul's statement in *Dives in Misericordia* that attempting to have justice without mercy leads to something less than justice.[17] Grisez, again, appeals to a passage later in

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16. CV 56.

17. DM 12.

the encyclical,[18] and notes that in a fallen world, any given person will often fail to render to another what justice requires.[19] The only way in which the other will then receive her just due is if a third person, who does not owe the second a debt of strict justice, will nevertheless generously provide her with what the first person failed to provide.

This argument is in fact echoed by Benedict XVI in his papal writings on love. He writes in his encyclical on God and love: "There will always be suffering which cries out for consolation and help. There will always be loneliness. There will always be situations of material need where help in the form of concrete love of neighbour is indispensable." It would seem that many of these are situations resulting at least remotely from various kinds of injustice. But, he proposes, they are situations that can only be remedied by love.[20] One argument for generous love, drawing from Grisez, John Paul, and Benedict, is then as follows. Reason tells us that in order to live in accordance with our own human dignity, we must respect the dignity of others by showing them justice. But we observe that people do not always do this; there are situations of injustice created by others that, *de facto,* will be remedied only by our own efforts to practice a generous love that goes beyond justice. Therefore, since the establishment of justice itself requires the practice of generous love, generous love is a moral requirement.

This would seem to be a form of natural-law argumentation that Aquinas would recognize as valid. One might compare what he says in the article "Whether the natural

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18. DM 14.

19. Grisez, *Way of the Lord Jesus,* 1:646.

20. DCE 28.

law is the same in all men?"[21] He distinguishes there between general principles and proper conclusions of practical reason, and he holds that the latter may vary in some cases. He gives as an example the principle that we must act according to reason, and the conclusion "that goods entrusted to another should be restored to their owner." He says that "this [conclusion] is true for the majority of cases: but it may happen in a particular case that it would be injurious, and therefore unreasonable, to restore goods held in trust." He adds that "the greater the number of conditions added, the greater the number of ways in which the principle may fail, so that it be not right to restore or not restore." In other words, when natural-law reasoning is considering how we ought to act in particular cases, it needs to take account of the relevant details of those cases, including such details as exist only because we are fallen (as in the case in which "goods held in trust ... are claimed for the purpose of fighting against one's country"). I suggest that to argue that the concrete situations that arise in a fallen world need to be taken into account when considering whether we sometimes need to do more than strict justice alone would require, is to make an analogous type of argument.

As I indicated when considering Grisez's reading of *Dives in Misericordia,* however, I think that this argument, though valid, is somewhat limited in what it can show regarding the need for love/mercy (and hence not a complete exegesis of John Paul's statement regarding that need). It shows that there are cases in which, in fact, "someone" will need to go beyond justice in order for justice to be done; it does not necessarily suffice as a strict demonstration of "my" need to be that "someone" in any particular case, as long as there is the possibility that "someone else" will attend to the

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21. STh I-II.94.4.

need. Nor does it seem to show why one must go beyond justice in dealing with someone else who has already received all that is due her as a matter of justice, as seems to be the case in the proposal that mercy be taken into account to reduce a punishment that is in keeping with justice. Perhaps the argument could be strengthened somewhat, at least with regard to the first of these limitations (the "Why me?" problem), by adding the following further considerations. It will be more likely that someone will attend to needs for love beyond justice, if a number of people exist who have the disposition to practice such love. But this would seem to be the sort of disposition that is developed by practice and that diminishes in the absence of continued practice.[22] Therefore, it is important that at least some people practice such love whenever possible, even in cases in which their failure to do so might perhaps be made up for by others. Only in this way will there likely be enough people disposed to practice such love so that it will in fact be practiced by someone when necessary. Furthermore, there could arise some cases in which I am the only one available to help someone in need of love. In order for me to be so disposed as to be ready to help in such cases, I myself need to practice love even when someone else might be available to do so.

This sort of reasoning might also help respond to the other limit of the Grisez argument, namely, that the argument does not seem to demonstrate conclusively that one needs to show love beyond justice in cases in which justice is being done. This sort of love beyond justice may not be simply identical to the sort that is practiced to remedy a situation of injustice. But there does seem to be an analogy between the two cases; they are not simply different. If we practice love beyond justice even when justice is already

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22. See e.g. STh I-II.51.2, 53.3.

being done, then we are probably more likely to practice love beyond justice when doing so is the only way to bring about justice. So if it is important to develop the disposition to practice love when justice requires it, then it is also important, as a kind of means to this end, that we develop the disposition to practice love when justice does not require it in a specific case.

The Need for Love: Moral Reasoning and Creation as Gift

Another way of showing, perhaps more deeply, the need for love beyond justice does not require, as its starting point, appeal to the reality of a fallen world and consequent situations of injustice. This way begins instead by considering that justice, by its nature, presupposes unmerited gift. The point is summarized by Josef Pieper. At the end of his essay on justice, he refers to the fact that "injustice is the prevailing condition in our world," and makes, in brief form, the argument described above.[23] Before this, however, he also writes: "[I]n order to keep the world going, we must be prepared to give what is not in the strictest sense obligatory." He traces this need ultimately to the "realiz[ation] that [one's] very being is a gift," adding that the one who fully realizes this "is also the man willing to give where there is no strict obligation."[24] In his later essay on love, he takes the position that human love, properly understood, is an affirmation that "is by its nature and must inevitably be always an imitation and a kind of repetition of this perfected and, in the exact sense of the word, *creative* love of God." Indeed, "in human love something *more* takes place than mere echo, mere repetition and imitation. What

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23. Pieper, *The Four Cardinal Virtues,* 112.

24. Pieper, *The Four Cardinal Virtues,* 110–11.

takes place is a continuation and in a certain sense even a perfecting of what was begun in the course of creation."[25] Thus, the giving beyond the obligatory, reflecting the realization of being as gift, is precisely love.

Pieper likely sees this realization of the gift character of creation as rooted in Aquinas' thought.[26] With regard to the consequent need to give beyond what justice requires, he refers explicitly to Aquinas' treatment of the virtues of "liberality, *affabilitas,* kindness, ... friendliness."[27] As Pieper notes, in Aquinas' treatment of "affability," he says that this sort of "friendliness" "falls short of the notion of justice, because it lacks the full aspect of debt"; yet he nonetheless holds that "it regards ... a certain debt of equity, namely, that we behave pleasantly to those among whom we dwell" (unless there is a reason making it necessary not to do so). This is because we "could not live in society ... without joy."[28] But, as was indicated in the discussion of Aquinas on justice in chapter 1, Aquinas thinks that human fulfillment requires participation in (virtue-promoting) society. Therefore, one might add, human fulfillment requires mutual affability among people.

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25. Pieper, *Faith, Hope, Love,* 171–72. With regard to the possible importance of Pieper's thought on love for an understanding of contemporary papal—John Paul II's, and also, as we have begun to see, Benedict XVI's—teaching, one might note Ratzinger's mention (*Milestones,* 43) of his appreciation of Pieper, and then the similarities between Pieper's (*Faith, Hope, Love,* 207–45) and Benedict's (DCE 3–8) treatments of the relationship between *eros* and *agape.*

26. E.g., STh I.44.1-2; 45.1, 3.

27. Pieper, *The Four Cardinal Virtues,* 111.

28. STh II-II.114.2 and ad 1.

Aquinas does not argue explicitly here that it is the gift character of creation that grounds the need for affability. But a case could be made that it is something like this gift character that lies in the background of what Aquinas says about this virtue. Why do we need the "joy" that comes from friendly relations with others? It might be suggested that when we express friendliness toward others, this is one way of expressing the "affirmation" that is love and that is a participation in God's creative giving. As part of our total dependence upon God, we depend upon this love. And also as part of our dependence upon God, it is in our nature not to live only for ourselves, but also to give ourselves back to God and to those others whom he has loved by the gift of creation, including by showing them the love that they need.

When Aquinas treats the virtue of "liberality," the connection with the doctrine of creation and the recognition of creation as gift is perhaps even clearer. Liberality is a virtue because virtue uses things well, and liberality uses "the things of this world that are granted to us for our livelihood" well. It does so not by neglecting one's own needs but by recognizing the limits of those needs and thus spending more on others.[29] But why should we use money for the needs of others rather than our own desires? Aquinas argues that "the use of money consists in parting with it." But we do this with "greater ... force (*virtus*)," by "giving it to others ... than when we spend it on ourselves."[30] Why, then, is money meant to be parted with (as perfectly as possible)? Perhaps, at bottom, because it is something "granted to us," as Aquinas says. But we ourselves are also "granted" to

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29. STh II-II.117.1 and ad 1.

30. STh II-II.117.4.

ourselves in God's act of creation. So perhaps we are meant to give ourselves, as perfectly as possible, and therefore in a way that goes beyond justice, to others.

This possible extension of the argument about liberality is further substantiated by an examination of what Aquinas says when he treats the same virtue in his commentary on Aristotle, specifically on the latter's statement that "it is easier [hence less virtuous] not to take from another than to give." Aquinas says that "a person giving what is his cuts himself away, so to speak, from what was a part of him."[31] If "the things of this world that are granted to us for our livelihood" are meant to be used, especially for others, even though once they become one's property they thereby become, "so to speak, ... a part of" oneself, then it seems all the more likely that we are meant to give our very selves as gifts to others.

The force of this sort of argument can perhaps be made still more evident by considering some recent developments in natural-law theory. I alluded very briefly in chapter 1 to one of the current debates among natural-law theorists, namely, that about the normative status of speculative knowledge of "nature" (and so also of a natural hierarchy of goods). Grisez[32] and those of his school, and also Rhonheimer,[33] have denied that there is any such normative status. While maintaining that the precepts of natural law direct us toward the perfection of our nature, that is, while affirming the metaphysical connection between nature and morality, and while also recognizing that practical knowledge of

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31. Aquinas, *Commentary on Aristotle's* Nicomachean Ethics IV.663.

32. E.g., Grisez, "First Principle of Practical Reason," 194; idem, *Way of the Lord Jesus,* 1:103–5.

33. E.g., Rhonheimer, *Natural Law and Practical Reason,* chap. 1; idem, *Perspective of the Acting Person,* passim.

human goods requires experience of those goods, they have denied that it is epistemologically valid to move from "is" to "ought." Various others have been critical of the "new" theories that reject this move, leading to the debate. For example, Russell Hittinger's monograph[34] was in turn critically reviewed by Grisez;[35] Hittinger responded briefly.[36] Gahl, while defending Grisez against Hittinger to some extent, nevertheless questions the absolute "is/ought" distinction.[37] A second debate, overlapping with the first one, concerns the role that references to God and religion need to play in natural-law reasoning. Put differently, it concerns whether natural law can (and ought to be) approached as a purely philosophical category, or whether, and, if so, how, it ought to be discussed in a theological context.[38]

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34. Hittinger, *Critique of the New Natural Law Theory.*

35. Grisez, "A Critique of Russell Hittinger's Book."

36. Hittinger, "Response to Professor Grisez's Critique."

37. Gahl, "Practical Reason," 16–20, 80–97.

38. See e.g. several essays collected together under the heading "Revelation and Natural Law": Fuchs, "The Natural Law in the Testimony of the Church"; Hughes, "The Authority of Christian Tradition and of Natural Law"; Hauerwas, "Nature, Reason, and the Task of Theological Ethics"; Schüller, "A Contribution to the Theological Discussion of Natural Law." Also, Bexell, "Is Grisez's Moral Theology Rationalistic?"; Black, "Is the New Natural Law Theory Christian?"; Biggar, "Karl Barth and Germain Grisez." Also, May, "Germain Grisez on Moral Principles and Moral Norms"; and, in response, Ashley, "The Scriptural Basis of Grisez's Revision of Moral Theology." Also, Novak, "Maimonides and Aquinas on Natural Law"; Yaffe, "Natural Law in Maimonides?"; Goyette, "Natural Law and the Metaphysics of Creation"; Cessario, "Why Aquinas Locates Natural Law within the *Sacra Doctrina*"; Fastiggi, "Natural Reason in the Service of Faith"; Muller, "The Christological Foundation of Natural Law." Also, Rowland, *Culture and the Thomist Tradition,* esp. 136–48. Also, for longer studies, Black, *Christian Moral Realism*; Hittinger, *The First Grace*; Porter, *Natural and Divine Law*; idem, *Nature as Reason*; Grabill, *Rediscovering the Natural Law*.

Some of the most recent interventions in these debates have, I suggest, added to our understanding of the reality and moral significance of nature as God's gift, and therefore also to our understanding of the problems with the Grisez/Rhonheimer rejection of nature as epistemologically normative. First, Fulvio Di Blasi has offered a new response to the Grisez school, examining closely Aquinas' treatment of morality in both the *Summa Theologiae* and the *Summa Contra Gentiles.* Di Blasi argues, to summarize the elements of his analysis that are most relevant for the purposes of this discussion of creation and love, that for Aquinas, the notion of natural law is intrinsically linked with that of knowledge of God as Creator, and, precisely as such, as present in created things, with their natures in accordance with his creative will. Hence, there is also an intrinsic link between love of God above all things, to which we are naturally inclined, and treatment of created things in ways that harmonize with their natures.[39] Second, Matthew Levering has studied the relationship between biblical and natural-law ethics. He responds to Rhonheimer, making an argument similar to Di Blasi's. Levering points to the importance of natural law "as a 'participation' in the eternal law,"[40] and elaborates upon this point, referring to "the non-competitive relationship between God and creatures, a relationship in which creatures are finite created modes of participating in the Creator God,"[41] and to the naturalness of love for God.[42]

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39. Di Blasi, *God and the Natural Law,* chap. 2.

40. Levering, *Biblical Natural Law,* 187.

41. Levering, *Biblical Natural Law,* 201.

42. Levering, *Biblical Natural Law,* 207.

Pace Levering's introductory claims,[43] awareness of this natural ordering to God does not suffice as a response to concerns about the necessity of the further ordering that is conferred by grace. As I argued in the previous chapter, living only in accordance with this natural ordering and nothing higher does not quiet the "restlessness" of the human intellect and will; hence, attempting to live in this way leads, as Balthasar says, eventually to Nietzsche. This natural ordering must be seen as nothing less than one of the ways in which nature is so made that the further gift of grace and supernatural life is fitting for nature. But the natural ordering does exist, and does enable us to begin to understand how love for God, and respect for the natures he creates, might be fulfilling. Most deeply, and most notably for our purposes, this ordering enables us to begin to see, using our human reason, how living as gifts to others, even beyond justice, might be fulfilling. If our very existence is a gift from God of constant presence of and participation in his being, then it seems reasonable to conclude that we are most fully ourselves when we live lives of grateful self-gift to God in return and to those others he has also created, as well as doing what is in harmony with our nature in other more specific ways.

John Paul II, Natural Law, and "Gift"

Examination of John Paul's pre-papal and papal writings indicates that, unlike the Grisezans and Rhonheimer, he understands speculative knowledge of nature to have a place in natural-law moral reasoning. The pre-papal text most indicative of this is an essay in which he writes that "every being—or, more precisely, the essence, or nature, of every being—can serve as the basis of an ethical norm and of the positing of norms. A

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43. Levering, *Biblical Natural Law,* 6–11.

being's essence, or nature, determines how free we are to behave with respect to that being, how we should or ought to behave when that being is an object of our activity."[44] There is a text in John Paul's papal encyclical on fundamental moral theology, *Veritatis Splendor,* that taken in isolation might be read as compatible with the understanding that all that is "natural" about natural law is the role that our natural faculty of reason plays in it, and that speculative knowledge of nature is without normative significance.[45] Elsewhere in the same encyclical, however, John Paul criticizes the view that the functions of (embodied) human nature "would not be able to constitute reference points for moral decisions."[46] Furthermore, in the same number of *Veritatis Splendor,* John Paul writes: "The person, by the light of reason and the support of virtue, discovers in the body the anticipatory signs, the expression and the promise of the gift of self, in conformity with the wise plan of the Creator."[47] For John Paul, both the basic fact of our createdness, and also the more specific aspects of our bodily nature, indicate that we are fully ourselves when we give ourselves. This text in *Veritatis Splendor,* with its teaching that we can know that we ought to make gifts of ourselves, is not the first such passage in John Paul's writings.

If the text from *Gaudium et Spes* 22 teaching that Christ reveals human persons to themselves is perhaps John Paul's favorite passage from the Pastoral Constitution, it is nevertheless not the only one that he quotes with some frequency. Already in his pre-

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44. Wojtyła, "Problem of Catholic Sexual Ethics," 287.

45. VS 42.

46. VS 48.

47. VS 48.

papal writings, he also makes reference to the teaching "that man, who is the only creature on earth which God willed for itself, cannot fully find himself except through a sincere gift of himself." The Council indicates that this is made known to us by Christ's prayer for human unity that is like the unity of the Trinity, that is, by revelation.[48] In a commentary, Wojtyła writes, accordingly: "The document of the last Council seems in these words to sum up the age-old traditions and inquiries of Christian anthropology, for which divine revelation became a liberating light." Continuing his commentary, however, he says that "in the experience of self-determination the human person stands revealed before us as a distinctive structure of self-possession and self-governance." Here (taking these words in themselves and in the context of the essay as a whole) he seems to be speaking of what we can know of ourselves by natural reason. And he continues further, arguing that "both self-possession and self-governance imply a special disposition to make a 'gift of oneself.'" Thus a "'law of the gift' ... is inscribed deep within the dynamic structure of the person." He reiterates: "The text of Vatican II certainly draws its inspiration from revelation ... This relational portrait of the person, however, necessarily presupposes the immanent ... portrait that unfolds before us from an analysis of the personal structure of self-determination"—that is, from a philosophical analysis.[49]

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48. GS 24.

49. Wojtyła, "The Personal Structure of Self-Determination," 193–94. See also the references to this essay as a work of "philosophy": ibid., 187–88, 189, 195. Wojtyła also mentions: "My point of departure here will be a discussion that arose following the publication of my book *The Acting Person*" (ibid., 187; cf. 194); thus, see also idem, *The Acting Person,* and for considerable discussion (including of problems with the published English translation), Schmitz, *At the Center of the Human Drama,* chap. 3. For references to GS 24 on "gift" in papal writings, see, e.g., John Paul II, *Mulieris Dignitatem* 7; CA 41; VS 86; EV 96.

John Paul's papal lectures on the "Theology of the Body" contain an extended reflection on gift. He speaks there of the importance of the words "Creator" and "created" as leading to a "hermeneutics of the gift" that must be applied in an interpretation of the human person and human relationships.[50] He continues by suggesting that human persons are gifts to one another.[51] He then moves into his treatment of what he calls "the 'spousal' meaning of the body."[52] He defines this as "*the power to express love: precisely that love in which the human person bcomes a gift* and—through this gift—fulfills the very meaning of his being and existence."[53] Schindler has commented on the significance of such "Theology of the Body" passages as these regarding creation, the body as gift, and the body as able to express love, for a response to the charge that morality is something imposed upon our nature.[54] In similar fashion, he has studied the "gift" passage in *Veritatis Splendor,* in itself and in relation to the "Theology of the Body" passages, and has suggested that they bear relevance not only for sexual ethics, but also for social and political morality.[55] This can be further verified[56] by considering John Paul's reference to Creator/creation and to gift in *Evangelium Vitae.* For example, as briefly noted in the

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50. TOB, 179–80.

51. TOB, 180–83.

52. TOB, 183–91.

53. TOB 185–86.

54. Schindler, "Is Truth Ugly?," 702–3, 707.

55. Schindler, "Significance of World and Culture," 138–39.

56. On the connections between these areas of Catholic moral thought/teaching, cf. also, e.g., CA 38–39.

previous chapter, John Paul refers to God as creator in the context of his reference to the cultural problem of "the eclipse of the sense of God and of man."[57] Specifically, he quotes *Gaudium et Spes*: "Without the Creator the creature would disappear. ... But when God is forgotten the creature itself grows unintelligible." He comments that one then "no longer considers life as a splendid gift of God."[58] He refers in particular to the negative implications of this forgetting of God for our understanding of our body as a place of gift.[59] He later calls for the fostering of "a *contemplative outlook,*" explaining that this "is the outlook of those who do not presume to take possession of reality but instead accept it as a gift, discovering in all things the reflection of the Creator."[60]

This "contemplative outlook," employing the "hermeneutics of the gift" in its interpretation of human bodily life and indeed of all of creation, is, in John Paul's view, not only philosophically valid, but also, it would seem, necessary for the development of a culture of life. John Paul's successor Benedict XVI has likewise incorporated the theme of "gift" into his contribution to Catholic social teaching, specifically his encyclical on human development. He speaks several times of the need for gift and gratuitousness in social life.[61] It seems that sometimes when he does so, he has in mind the gift of supernatural charity, given in the context of the "fraternity" that only comes from our

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57. EV 21.

58. EV 22.

59. EV 23.

60. EV 83.

61. CV 34, 36–37, 39, 48, 50, 68.

relationship with God in Christ by grace.[62] But this not always so. Thus he speaks of "both the light of reason and the light of faith, through which the intellect attains to the natural and supernatural truth of charity: it grasps its meaning as gift, acceptance, and communion."[63] Apparently the charity that he has in mind also has a natural component. Likewise he speaks of the environment and nature (including but not limited to human nature) as (natural) gifts to be treated as such.[64] And he refers to "natural and supernatural fraternity";[65] it would seem, then, that, like charity, fraternity has a natural component, even if Benedict does not see it as something that can be obtained by our natural power alone.

The theme of (human) nature as, normatively as well as speculatively speaking, a gift, has, then, become a significant component of both some of the most recent contributions to the discussion of natural-law theory within Catholic thought, and of recent official Catholic social teaching. To repeat once again, this does not contradict the argument that love/mercy in particular and morality in general are only fully appreciated as fulfilling in the context of the revelation of God's call to us to a graced supernatural relationship with himself. This is true because mercy is especially an aspect of such a relationship, and also because we have a natural desire for and are left "restless" apart from such a relationship. But some recent theology and official Church teaching seem to

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62. CV 19. See also as background his pre-papal work, Ratzinger, *The Meaning of Christian Brotherhood.*

63. CV 3.

64. CV 48, 50–51.

65. CV 73.

agree that there is also a basis in natural human moral reasoning for beginning to see the value of love that goes beyond justice, and indeed that this is one way to see nature as open to and fittingly perfected by grace.

Again, I would be hesitant to claim that this fully establishes a conclusive argument for mercy in punishing that should convince every single person of good will. But I would venture to speculate that it is likely that many such people can and will, even apart from Christian revelation, at least begin to see valid reasons to regard withholding unnecessary use of capital punishment as a good choice. And I would add again the point that I made at the end of the earlier section on the fallen world in this chapter. One is most likely to practice generous love if one has become disposed to do so; one becomes so disposed through practice, including, and perhaps especially, through the practice of the most radically generous love, such as merciful love in cases in which the alternative is really just, rather than the development of a situation of injustice. Some failures to love—for instance, failures to practice what Aquinas calls affability—might (if repeated often enough) lead fairly directly and predictably to social breakdown in some measure, and hence to injustice. Others—like failures to temper criminal justice with mercy—might not. But I think that it is reasonable to expect that they might eventually do so indirectly, by creating cultures not sufficiently disposed to practice the love that is most obviously necessary for social life.

Indeed, one might underscore that something like love/gift is a principle or norm that seems to unify much of contemporary Catholic moral/social teaching, regarding sexuality, marriage, and family; socioeconomic matters; and respect for human life. The point is not simply that the theme of love/gift arises in papal teaching regarding all of

these areas of social life. The point, furthermore, is that failure to live generous love in one area will so affect us, individually and together, that we will more likely fail eventually to live such love in other areas also. Failure to practice generous love in one area of respect for life, as by practicing mercy rather than making unnecessary use of capital punishment, will undermine our readiness to practice such love when the lives of the innocent, such as the unborn, are at stake. And failure to practice generous love in the area of respect for life in general, or in the area of sexuality, marriage, and family, or in the economic sphere, will undermine our readiness to practice it in the other areas. Finally, if we do not practice generous love in these areas, we will fail to achieve justice.

Conclusion

This dissertation has been a study of John Paul's teaching in the encyclical *Evangelium Vitae* that capital punishment ought not be used unless it is the only way to defend society from further aggression by someone who has already committed a grave crime. My introduction makes a preliminary argument, based especially on a close reading of the relevant portions of the encyclical, that this entire teaching (though not the further judgment that such cases are today very rare at best) should be understood as grounded in moral principle regarding what will always be necessary for a healthy society, not merely as a prudential judgment regarding what will be necessary in the circumstances of a morally unhealthy society. The immediate context of John Paul's reference to the movement against capital punishment as a "sign of hope"—his explanation of what "sign of hope" means, and the nature of the other such "signs of hope" he includes in the same list—constitutes especially strong evidence in favor of my

interpretation, though it must be further substantiated by identification and analysis of the principle in question.

Chapter 1 responds to the attempt by members of the Grisezan school of moral theology to identify the principle as an absolute norm against the intentional (as end or means) taking of human life, a 'basic good' of the human person, and to understand *Evangelium Vitae* as pointing in the direction of a teaching that capital punishment is therefore intrinsically evil. I argue that this is not correct. John Paul's exact ways of speaking about capital punishment and about the killing of the innocent suggest instead that he sees them as different cases, and capital punishment as permissible in rare types of situations. While he does not make anything like an explicit argument for capital punishment, Aquinas does, and the Grisezan reading of Aquinas' argument as unsuccessful does not take sufficient account of key presuppositions and details of that argument, such as the role of virtues like justice as human goods, the similarities (as well as differences) between capital punishment and other kinds of just punishment like imprisonment, and the importance of the political community for human fulfillment, such that charity would allow the just killing of a criminal who remains dangerous to that community. Statements by John Paul that may appear at first to contradict key elements of Aquinas' argument turn out, upon careful analysis, not to.

Chapter 2 begins to elaborate the argument that John Paul's reason for rejecting most use of capital punishment is rooted in his understanding of the nature and importance of mercy. For John Paul, full respect for human dignity requires doing what is possible to help bring about the conversion of the sinner, and this in turn requires mercy. In contrast to some of the diverse opinions about mercy in our contemporary society, John

Paul sees mercy as neither something that is only sensible when there are mitigating factors in a case, nor something supererogatory. Like Aquinas, he understands supernatural charity as essential to Christian morality, and mercy as essential to charity. Drawing from Faustina's spiritual diaries and from his own reflections on fatherhood, John Paul builds upon Aquinas' understanding by adding certain emphases, especially the nature of mercy as a participation in the "radiation" of God's fatherhood, the role of sacrifice in showing mercy, and the ability of mercy to bring about conversion. He concludes that it is necessary to show mercy in punishing. Since mercy is a component of charity, and charity requires protection of the lives of all the members of the community, the necessity for mercy does not generate an absolute norm against the use of capital punishment; it is not a violation of the 'right to life'; as John Paul says, it might be necessary and licit in some very rare cases. But it is still not otherwise morally licit. Such costs as the community might incur by refraining from using capital punishment, costs in the form of money for secure prisons, for counseling for murder victims' loved ones who are concerned about "closure," and the like—costs other than actual continuing danger to the lives of the innocent in the community—must be accepted as examples of the sacrifice that is intrinsic to mercy.

Chapter 3 continues the analysis of mercy by focusing on John Paul's understanding of the relationship between mercy and justice. Specifically, John Paul teaches that attempting to have justice without mercy will result in something less than justice. Thus it is not simply that justice does not require punishing murderers with death, and that mercy is beneficial or even commanded by God; it is that insisting on doing all that justice allows (but does not require), rather than using mercy when possible, leads to

a failure to attain even a just society. This teaching is rooted, I argue, in John Paul's acceptance of Henri de Lubac's understanding of the human person as having a natural desire for a graced supernatural relationship with God leading to the vision of God. There has been significant criticism of de Lubac's theological anthropology, but one can offer plausible defenses of that anthropology against key criticisms. Consideration of the personal relationship between de Lubac and Wojtyła/John Paul II, and of the latter's own writings, makes likewise plausible the conclusion that he understands the Second Vatican Council's anthropology, especially its statement that by revealing the Father and his love, Christ reveals human persons to themselves, in accordance with de Lubac's thought. And this anthropology is the starting point for John Paul's teaching regarding mercy. In fact, from the existence of the natural desire for God, it can be concluded that attempting to live in a way that rejects key elements of full supernatural communion with God, like mercy, will lead to continued "restlessness" and will not be sustainable. Likewise, attempting to bring about conversion of criminals without showing the mercy that invites conversion to the life of supernatural charity will be less likely to be successful.

Chapter 4 has considered whether this teaching further implies that the political community ought to make decisions about how to act based on truths accessible only through supernatural faith. On the one hand, in the self-understanding of official contemporary Catholic social teaching, there seems to be an intrinsic relationship between the call to evangelize society and that social teaching. This is in keeping with the points made in the previous chapters, about mercy as above all a supernatural and revealed reality, and about the broader meaning of morality as a whole, at least insofar as morality is to be seen as leading to real peace rather than leaving us "restless," as likewise

a revealed reality. On the other hand, there are reasons to think that the Church's social teaching, including the call for love/mercy, is to some extent comprehensible on the basis of natural-law moral reasoning, especially insofar as the latter can and ought to take into account our status as creatures and therefore as gift, to live for others in more than a minimalistic way (giving them their just due and nothing more). So while the complete "implementation" of Catholic social teaching does presuppose evangelization, one can also appeal to human moral reasoning to provide at least the beginning of an explanation of its more specific norms, even the norm against unnecessary use of capital punishment. This norm does not, then, call upon the political community to do something that is simply incomprehensible apart from faith.

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