

A Time for Reflection: 25 Years of State Executions

By: Rita Linhardt

On January 6th, 1989, the state of Missouri resumed capital punishment when it executed George Mercer. This was the first execution in Missouri after it re-instated the death penalty in 1977. Twenty-five years later Missouri has executed 70 individuals, ranking the state the 5th highest in the nation in carrying out capital punishment.

On this somber anniversary it is appropriate to reflect on our death penalty journey. Missouri quickly embraced capital punishment after 1989. By the mid-90s it seemed nothing could stop the machinery of death, with an execution taking place about every two months in Missouri. In 1999, Pope John Paul II ignited worldwide attention on Missouri when he called for an end to the death penalty in a St. Louis visit and successfully pleaded to Governor Carnahan to commute the death sentence of a condemned inmate. It was a transforming event in the journey that energized abolitionists.

The new millennium brought Missouri victories, including the passing of legislation to protect persons with mental retardation from the death penalty and the U.S. Supreme Court upholding a Missouri case banning the execution of juveniles. Thanks to legal challenges in the last decade, Missouri had an unofficial moratorium on executions for almost four years from 2005-2009.

During this quarter century, Missouri citizens, including Catholics, have reconsidered their views on the death penalty. Some saw capital punishment as morally wrong and joined in abolition work. Others held back, perhaps because of their moral outrage at senseless violence. The Catholic Church became a leading voice against the death penalty. New church statements more clearly articulated

church teachings and urged Catholics to work to end the death penalty.

Twenty-five years of executions have resulted in a body of evidence showing that the death penalty is a systemically flawed system. Research shows the death penalty is arbitrary, racially biased, and prone to mistakes. The toll of executions have been clearly felt by corrections workers, legal professionals, and even murder victim family members—many of whom have joined their voices in opposition.

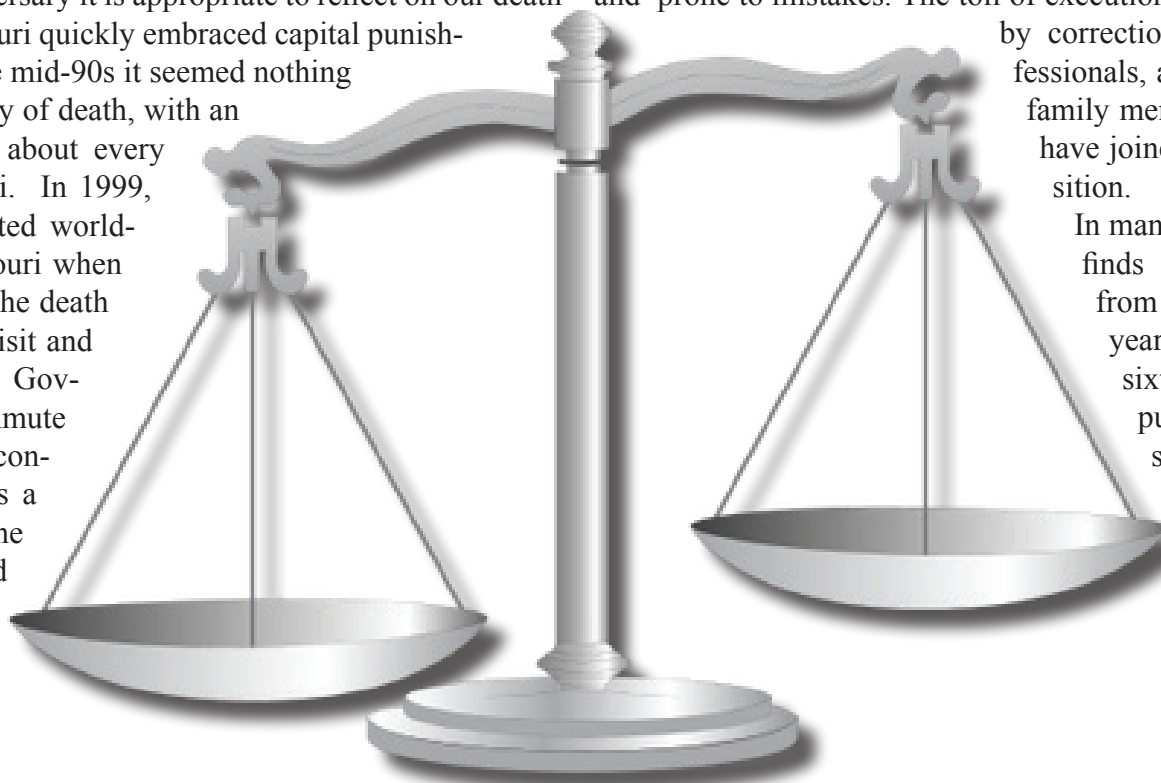
In many ways this anniversary finds a nation turning away from the death penalty. Last year Maryland became the sixth state to end capital punishment in the last six years. Nationwide, death sentences and executions continue to decline. Thirty states have not had an execution for the last five years. Public support for the death penalty as measured in the annual

Gallup poll declined to its lowest level in 40 years.

Missouri, however, is at a crossroads. Instead of following the national trend of moving away from executions, two executions have been carried out in recent months. State officials have shown unusual determination to carry out executions amid growing secrecy and haste. They appear willing to violate state laws by using an unlicensed drug pharmacy and skirting judicial review. A state audit and a legislative investigation into the matter are being planned.

Will this renewed attention to the death penalty finally put an end to executions? Only time will tell.

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Reflections from Catholic Teaching

The Catholic response to the death penalty is shaped by an understanding of good and evil, sin and redemption, justice and mercy. Catholic teaching is built on the foundation that we are created in the image of our Creator and that every life is a precious gift from God. Each of us is called to respect the life and dignity of every human being. Even when people deny the dignity of others, we must recognize their dignity is God-given and not something that is earned or lost by their actions. Respect for life applies to all, even the perpetrators of terrible acts. But Catholic tradition also holds that those harmed by violence deserve both justice and compassion. Those who inflict such harm must be held accountable. Yet punishment should be consistent with the demands of justice and with respect for human life and dignity (U.S. Bishops, *A Culture of Life and the Death Penalty*).

While the Catholic Church has not denied its traditional position that the state has the right to employ capital punishment, many church leaders have spoken against the exercise of that right by the state.



In his encyclical *Evangelium Vitae*, Pope John Paul II stated that punishment “ought not go to the extreme of executing the offender except in cases of absolute necessity,” that is, only when it would be otherwise impossible to defend society. The pope noted that such cases of absolute necessity are “very rare, if not practically nonexistent” (56).

Some use scripture, especially the Old Testament verse “an eye for an eye, a tooth for a tooth” (Leviticus 24:20), as a justification for the death penalty. But this is a plea for less violence, by urging people not to avenge one offense with a larger one. Catholic teach-

ing does not support vengeance as way to achieve justice. In the Gospels, Jesus said that retaliation was an incorrect response to violence. Rather, Jesus tells us to offer the other cheek and extend our hand in blessing and healing (Matthew 5:38-48).

The U.S. Catholic Bishops have often addressed the culture of violence we live in and see the death penalty as perpetuating a cycle of violence. As they stated in *Confronting a Culture of Violence*, “We cannot teach that killing is wrong by killing.” Catholic teaching increasingly sees the death penalty as a false promise. As the U.S. Bishops eloquently stated in *A Good Friday Appeal to End the Death Penalty*, “Increasing reliance on the death penalty diminishes all of us ... We cannot overcome crime by simply executing criminals, nor can we restore the lives of the innocent by ending the lives of those convicted of their murders. The death penalty offers the tragic illusion that we can defend life by taking life.”

Arbitrary Punishment

All people who commit murder should be held accountable. But when it comes to punishment, who lives and who dies is a lottery. Tragically more than 15,000 human beings have been murdered in Missouri since 1977. Yet county courts have imposed “death” in only about 180 instances (less than 1.5% of all intentional homicides).

While one may think that these 180 offenders must have been the “worst of the worst,” in reality they have often been those with the worst luck. Individuals who have committed some of the most gruesome murders in Missouri have escaped the death penalty, while capital punishment has fallen heavily on people of color, the poor, those with limited mental capacity, many with histories of mental illness, and some with claims of reasonable doubt.

One of the reasons for the arbitrariness in capital punishment is that the county prosecutor (or district attorney) has total discretion as to which cases to pursue with a death sentence.

This has often resulted in geographic pockets of capital punishment use. For example, from 2000-2008 St. Louis County prosecutors obtained 10 sentences; while St. Louis City prosecutors did not pursue a death sentence in any homicide case. This is true even though during that time St. Louis County had one-fourth as many people murdered as in St. Louis City.

Prosecutors themselves are aware of the arbitrary nature of the death penalty. Dee Joyce Hayes, who worked as St. Louis Circuit Attorney for eight years, noted in 2008, “I never saw a way that you could make the death penalty consistent across jurisdictions, juries, counties, and prosecutors.”

The geographic disparity of the death penalty can also be seen

nationwide. According to a recent report by the Death Penalty Information Center, only 2% of the counties in the U.S. have been responsible for the majority of cases leading to executions since 1976. St. Louis County and St. Louis City ranked ninth and tenth out of the top 15 counties in the nation responsible for the most executions during that time.

The Race Factor

When the U.S. Supreme Court reinstated the death penalty in 1976, the justices believed it could be administered fairly and justly. Over the years evidence has shown that the influence of race in the death penalty is pervasive and corrosive.

In a comprehensive study of over 10,000 Missouri homicides from 1978-1996, Professor Mike Lenza of the University of Missouri found that blacks accused of killings whites were 5 times more likely to be charged with capital murder in this state than blacks who kill blacks.

Race also affects who makes the death penalty decision. Even though the U.S. Supreme Court ruled in 1986 that it was unconstitutional for the prosecutor to dismiss potential jurors based solely on their race, the practice of seeking all-white juries in capital cases continued. St. Louis County prosecutors, in particular, have been cited by the Missouri Supreme Court for a history of seeking to exclude blacks from juries, with the court granting relief to some defendants on that basis.

Innocence

One of the greatest concerns that arises when dealing with the death penalty is that an innocent person will be executed. Since 1973, there have been 143 persons exonerated from death row nationwide. For every nine executions, one person on death row has been found wrongly convicted.

Four men in Missouri living under a death sentence have been exonerated; Reginald Griffin (2013); Joe Amrine (2003); Eric Clemmons (2000); and Clarence Dexter (1999).

How do innocent people get convicted and sentenced to die? While each case is unique, common causes include eyewitness misidentification, forensic science problems, false confessions, snitch testimony, poor lawyering, and misconduct by law enforcement or prosecutors.

DNA evidence was responsible for 18 of the 143 exonerations. In the majority of cases, however, innocence was proved through the persistent work of journalism students, volunteer lawyers, or family members that uncovered something that was entirely missed earlier in the case.

Exonerations tell only part of the story. Have innocent people been executed? Through the years, a few inmates like Roy Roberts raised legitimate claims of innocence. Yet he was executed in 1999 and the case was ended. As one prominent Missouri defense lawyer responded to the plight of wrongful convictions, “In Missouri, we bury our mistakes.”

Judicial Review

One of the requirements of the U.S. death penalty system is automatic appellate review of death convictions and sentences. This ensures another level of scrutiny to prevent errors. This is important as a national study showed that one-third of death sentences in Missouri are reversed on appeal because of errors.

The importance of judicial review was apparent in a recent opinion by Honorable Kermit Bye of the Eighth Circuit Court of Appeals admonishing Missouri’s execution practices. The judge noted Missouri executed Allen Nicklasson on Dec. 11, before the federal court could rule on the constitutionality of Missouri’s execution protocol.

The opinion then goes into detail on Missouri’s “well-documented history of attempting to execute death row inmates before the federal courts can determine the constitutionality of executions.” The opinion states Missouri is treating executions like a “game of chess” making changes to their methods and moving to carry out executions while the lawyers and the courts try to keep up. Judge Bye was especially critical of Missouri’s “current practice of using shadow pharmacies hidden behind the hangman’s hood” and “copycat pharmaceuticals.”

Care for the Victim’s Family

Murder often leaves a gaping wound in the victim’s family that can result in years of trauma, pain, and grief. What can be done to help these families heal and be restored?

While some still cling to the belief that the death penalty will bring “closure,” many victim families reject that idea. To these families, too much time, energy, and resources are diverted to very few cases that ever result in a death penalty. They see the death penalty as more of a distraction than a help. With ongoing legal challenges and delays, the death penalty often adds to a family’s frustration and slows the healing process.

Without a costly death penalty system resources could be available to help families with funeral costs, daily needs while grieving, counseling services, education for the victim’s children, and community resources to help make everyone safer.

As Catholics we are called to reach out to victims of violence and their families. As individuals and communities of faith we need to minister to the spiritual, physical, and emotional needs of these individuals. Our efforts, no matter how small, are appreciated. As a victim once remarked, “sometimes a hug, a prayer, and a friendly ear can achieve wonders.”

Information for this article was obtained from the Death Penalty Information Center and Missourians for Alternatives to the Death Penalty.

—Rita Linhardt is the senior staff associate for the MCC

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Of Pope Francis, Dostoevsky, and the Death Penalty

By: Mike Hoey

In an interview with the Italian Jesuit journal *La Civiltà Cattolica* last fall, Pope Francis cited the 19th century Russian novelist Fyodor Dostoevsky as one of his favorite authors. In the context of what we have learned so far about the Holy Father, this is not a surprising choice. Dostoevsky is a celebrator of God's love and forgiveness but only after the sinner has accepted that he must suffer and repent.

Reading one of Dostoevsky's most celebrated works, *Crime and Punishment*, can be instructive when considering issues surrounding the death penalty. In the novel Raskolnikov confesses to Sonya that he has committed murder but she offers little comfort or room for rationalizations, "You have deserted God and God has stricken you, and given you over to the devil."

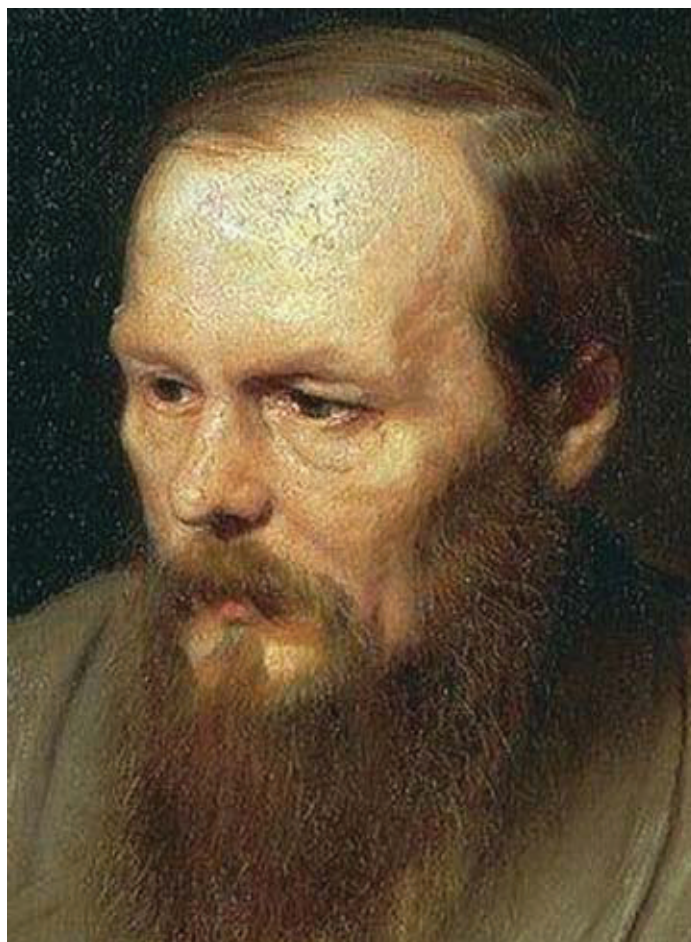
Raskolnikov eventually confesses his crime to the authorities, "It was I who killed the old pawnbroker woman and her sister Lizaveta with an axe and robbed them." He is sentenced to hard labor in Siberia. But sincere repentance comes to Raskolnikov only near the end of his prison term. In his cell he takes up the Gospels Sonya has given him and begins to read about the good news of Jesus Christ.

This potential for repentance should never be discounted, no, not even for someone who has committed a horrible murder. Yet Sonya's first reaction to the Raskolnikov's confession is only just. Her response is not unlike that of the Lord in speaking to Cain after he murders Abel, "What have you done? The voice of your brother's blood is crying to me from the ground."

This cry of anguish is re-echoed by the loved ones of every murder victim. At the heart of the debate over the death penalty hangs this awful question: how can the scales of justice ever be righted? No argument about the non-deterrent value of capital punishment can respond to this anguished question, for this question comes from an interlocutor not concerned with facts but with obtaining justice.

In the passion of the moment some may want swift justice, even if it means exacting vengeance themselves on the murderer. But this can lead to a tit-for-tat cycle of violence that no civilized society can tolerate; therefore, the power to punish is held solely by the state acting in the interest of the entire community.

Catholic teaching recognizes that "[L]egitimate public authority



—A portrait of Fyodor Dostoevsky, Russian Novelist and author of *Crime and Punishment*

has the right and the duty to inflict punishment proportionate to the gravity of the offense," (*Catechism of the Catholic Church*, par. 2266). However, this same teaching calls for the use of "non-lethal means" when this is sufficient to protect people's safety. Why this mildness, is this not a betrayal of the demands of justice? Should not the murderer forfeit his life for the life he or she has taken?

At the center of the Catholic perspective on the death penalty stands a very clear recognition of the dignity of every human person. Not even grave crimes such as murder can completely wipe out this God-given dignity. And so the Church calls for the use of alternatives to the death sentence and observes that "The cases in which execution of the offender is an absolute necessity are very rare, if not practically non-existent," (*Catechism*, par. 2267).

In rejecting the use of the death penalty the State says to its citizens that problems should be solved nonviolently. On a more personal level opting not to execute an offender gives that person precious time to repent and ask for forgiveness. And by the grace of God the loved ones of murder victims may be led to forgive and then to move on. An execution, however,

cuts these opportunities short.

Dostoevsky knew first-hand the value of having more time. As a young man he was arrested for being a member of a secret utopian society and sentenced to death. On a wintery day in 1849, he was taken from prison and driven to the Semyonovsky Parade Ground in St. Petersburg for the execution. In a letter to a friend Dostoevsky described the scene:

There the death sentence was read to us all, we were given the cross to kiss, swords were broken over our heads, and our final toilet was arranged (white shirts). Then three of us were set against the posts so as to carry out the execution. We were summoned in threes; consequently I was in the second group, and there was not more than a minute left to live ... Finally the retreat was sounded, those who had been tied to the posts were led back, and they read to us that His Imperial Majesty granted us our lives.

This act of pardon by Czar Nikolai I made a deep and lasting impression on Dostoevsky, as he observed, "Only to live, to live and live. Life whatever it may be!" Some may see such stories as naïve and romantic, but as Pope Francis has said, "God does not mislead hope; God cannot deny himself. God is all promise."

—Mike Hoey is the executive director of the MCC