

**TO KILL OR NOT TO KILL:
THE CATHOLIC CHURCH AND
THE PROBLEM OF THE DEATH PENALTY**

YAMAUCHI LECTURE IN RELIGION
18 March 2001¹

By E. Christian Brugger
Assistant Professor of Ethics
Department of Religious Studies
Loyola University New Orleans

“But the ungovernables, the ferocious, the conscienceless, the idiots, the self-centered myops and morons, what of them? Do not punish them. Kill, kill, kill, kill, kill them.”²

[George Bernard Shaw]

“Not only must human life not be taken, but it must be protected with loving concern. The meaning of life is found in giving and receiving love . . . Society as a whole must respect, defend and promote the dignity of every human person, at every moment and in every condition of that person’s life.”

[John Paul II, *Evangelium Vitae*, 81]

Outline:

- A. Introduction: what’s going on with the Catholic Church and the death penalty?
- B. What is the current position?
- C. What is the ‘traditional’ position?
- D. Is the current position a ‘doctrinal development’ of the traditional position?
- E. Can we anticipate the current teaching to progress further?
- F. Why might the Church be saying something new?
- G. Conclusion

A. Introduction: what’s going on?

On the evening of May 16th, barring a presidential pardon, Timothy McVeigh, architect of the worst act of domestic terrorism in US history,³ having forgone all remaining appeals. will walk from his holding cell into the federal execution chamber at Terre Haute.

Indiana, be strapped to a gurney, have catheters pressed into his veins, and, upon the warden's signal, begin receiving an IV cocktail of deadly chemicals; first *sodium pentothal*, a barbiturate, will render him unconscious; then *pancuronium bromide*, a muscle relaxant, will paralyze his diaphragm and lungs; and finally, potassium chloride will cause cardiac arrest. A twitch or two, like the start of a man falling asleep, may be momentarily visible, but then all will be still. Timothy should be dead within ten minutes.

In the weeks preceding May 16, the Justice Department will receive last minute petitions for executive clemency from a variety of death penalty opponents, among whom, no doubt, will be Catholic bishops, perhaps even the bishop of Rome.

Episcopal petitions for clemency for the condemned have a long history in the Catholic Church. Fathers like Gregory of Nazianzus, Ambrose and Augustine,⁴ each urged Christian magistrates to use non-lethal means if at all possible in the exercise of their juridical duties. At the same time, each would have vigorously and publically defended the basic right of civil authority to inflict the death penalty. In fact, from the earliest days of the Christian church up to the first half of the 20th century a confident, consistent and coordinated defense of the right of the state to kill criminals was maintained by the Catholic Church. The first signs of a weakening in this regard were discernable as early as the 1950s. The weakening increases -- albeit gradually -- in the 60s. And in the 70s the floodgates burst. In the last 30 years literally hundreds of public statements opposing the death penalty -- more perhaps than in the previous centuries combined -- have been published by the Catholic hierarchy on a local, national and international level.⁵

Leading the opposition is Pope John Paul II. Not only has he initiated a wide-scale rethinking on the thorny issue of capital punishment in the Catholic Church with the publication of his 1995 encyclical *Evangelium Vitae*, but he also has taken (and continues to take) every opportunity possible, pastoral and political, to protest the death penalty's infliction in the modern world and to admonish Catholic consciences to be committed to the cause of worldwide abolition as an expression of commitment to the dignity of the human person.

Now anyone with even modest historical knowledge of the Church's past teachings on the subject, and who looks at the writings of the last thirty years, particularly of the past decade, is bound to ask: What's going on? Has the Church rejected the death penalty? If not, is she planning to? What in fact is the current position? Is it reasonable to refer to it as a 'doctrinal development' over the traditional position? Can we anticipate the current teaching

B. What is the current position?

To get a handle on the current teaching we'd do well to look at its most complete articulation to date in the 1997 definitive edition of the *Catechism of the Catholic Church*.⁶ Recall, now, that the text of this edition is the universal *Catechism's* second attempt at the issue of capital punishment, its first being the 1992 French edition (from which all other translations at the time were prepared). The 1992 statement was subsequently revised to reflect the stronger opposition found in John Paul II's tenth and most widely read encyclical, *Evangelium Vitae*.

The 1997 statement, in Part III, article 5 of the *Catechism*, on the Fifth Precept of the Decalogue, reads as follows:

Assuming that the guilty party's identity and responsibility have been fully determined, the traditional teaching of the Church does not exclude recourse to the death penalty, if this is the only possible way of effectively defending human lives against the unjust aggressor.

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

Today, in fact, as a consequence of the possibilities which the state has for effectively preventing crime, by rendering one who has committed an offense incapable of doing harm – without definitively taking away from him the possibility of redeeming himself – the cases in which the execution of the offender is an absolute necessity 'are very rare, if not practically non-existent.'
[Note to John Paul II, *Evangelium vitae* 56] (Paragraph number 2267)

A popular interpretation of this section goes something like this:

the Church has always taught that the state has the right to inflict punishments on duly convicted criminals, including, if need be, the

if it manifestly contributes to the building up of the common good. Given the rise of effective non-lethal alternatives in today's world, recourse to the death penalty is no longer necessary for preserving the common good. Therefore, its infliction in the modern world, while in principle legitimate, is effectively illegitimate.

The *Catechism's* account is understood here to be no more than the derivation of a new practical conclusion resulting from the application of an unchanging principle (viz., *civil authority possesses the right to kill malefactors for the sake of the common good*) to changing conditions. If we look closer, however, I think we will see that something more is being said. A careful scrutiny of the *Catechism's* text in context will show that it is *not* saying what the Catholic Church has always said about the morality of capital punishment, only in a new way. It is saying something new. It is saying, I will argue, that the act of capital punishment, conceived and executed for the purpose of killing a human being, is never legitimate. I will defend this interpretation by highlighting two principal elements of the *Catechism's* analysis. First, its analysis strictly ties the death penalty to a model of *self-defense*. From this it follows that the act referred to in the text as *poena mortis* ("capital punishment") is not, precisely speaking, an act of punishment, but an act of collective self-defense by the community against an internal threat. Second, capital punishment, as well as all acts of 'legitimate' killing, are subsumed under a model of 'double-effect.' Implicit is an understanding of the death penalty which limits its lawful infliction to conditions traditionally circumscribing legitimate killing in private self-defense. It follows that the type of act traditionally referred to as capital punishment, i.e., an act whose precise specification entails an intent to kill, is morally wrong. Let us look at each assertion more closely.

First, *its analysis strictly ties the death penalty to a model of self-defense*. In order to appreciate this we must first be clear on the nature of punishment in general. Punishment properly understood is a retrospective action, i.e., its justification in the present is because something has been done in the past. Punishment, we might say, looks back at the already committed offense. We only punish people who commit crimes. This is because we believe certain acts *deserve* punishment. We say a criminal is 'guilty' and therefore 'is just getting what he deserves;' we say 'a great evil has been done and must be punished'; we say the punishment should 'match' or 'fit' or 'be proportionate to' the crime, and so on. These are all different ways of referring to punishment's *retributive* purpose. Whatever other purposes

protection of the innocent from impending harm), punishment is punishment (as opposed to any other non-penal coercive sanction, e.g., quarantines for the infected, asylums for the insane, enforced curfews for minors) to the extent that it is being carried out for a crime.

Having said this, we note at once that the *Catechism* ties its analysis of the death penalty, not to a model of punishment *qua* punishment, but strictly to a model of self-defense. We see this in the first place in the title of the subsection in which capital punishment is treated. The section is entitled “Legitimate defense” (*defensio legitima*), a term uncommon in Catholic theology.⁷ When Aquinas uses the related term, ‘blameless defense’ (*inculpata tutela*) -- he never to my knowledge uses the term *defensio legitima* -- he is referring to a blameless act of *self-defense*; and this self-defending act, if it results in the harm or death of the aggressor, must include neither as its end nor means the death or injury of the assailant.⁸ When the 1917 and 1983 Codes of Canon Law use the related term “legitimate defense” (*legitima tutela*) in treatments of justifiable homicide, they, like Aquinas, are referring to legitimate killing in private acts of *self-defense*.⁹

We see again the self-defense motif in the fact that the section insists that death is legitimate only when *necessary for defending* human lives against attack. But when the concept of ‘necessary defense’ is found in theological literature prior to Vatican II, it rarely if ever is used in treatments on the morality of capital punishment. It is rather used to refer to the killing of aggressors by private persons in self-defense, in most cases specifying that the harm done must be unintended.¹⁰ Finally, we see the section’s intention to frame its discussion in terms of ‘self-defense’ in the fact that it refers to the recipients of capital punishment (i.e., to those who are legitimately put to death) as “aggressors”, not ‘criminals,’ ‘the condemned,’ ‘prisoners,’ and the like. An ‘aggressor’ is one who attacks. To defend against an aggressor is to defend against one who is or soon will be ‘attacking.’ And the kind of defense section 2267 refers to entails “rendering [the aggressor] . . . incapable of doing harm.” This language is a red-flag to anyone familiar with the Church’s tradition of justifiable homicide. ‘Rendering aggressors incapable of causing harm’ is classical terminology used to refer to the lawful killing of aggressors by private persons in self-defense; and the tradition unambiguously asserts that that killing *must be unintended* (i.e., be no more than a side-effect of an otherwise legitimate act of proportionate self-defense).¹¹

Second, *capital punishment, as well as all acts of ‘legitimate’ killing, are subsumed under a model of ‘double-effect.’* Permit me a brief aside on the term *double effect*. The term is a name given to the insight, developed by Aquinas, that among the many true things

purposes of morally assessing that behavior is the *intentional*,” i.e., the ends and means chosen by the acting person for carrying out a plan of action.¹² But the same piece of behavior may also have effects which are *unintended*. Since the morality of an act is primarily (though not exclusively) determined by what is intended, and not according to what is unintended, it *can be* morally legitimate to proceed with an act one foresees (even clearly) will have bad side-effects -- perhaps even lethal side-effects -- provided one does not intend those effects.

But this is pure sophistry, you might say. If a person *causes* an effect, surely that effect was intended. Not necessarily. If a student with fragile health rides his bike to class in the rain foreseeing he might catch cold, need it be he is intending (i.e., *willing*) himself to get sick? Or if a mother stays late at the office foreseeing her lateness will cause her daughter loneliness, would it be correct to say she is intending her daughter to be lonely? Or more seriously, if a pregnant woman with life-threatening uterine cancer decides to have a hysterectomy, foreseeing that the non-viable child in her womb will die thereby; if she intends the good end of regaining her health by virtue of the good or at least neutral means of undergoing a surgical operation, and at no time intends but only foresees the bad effect to her baby; is she worthy of any blame? In each case traditional moral reflection answers ‘no’. ‘Double effect’, therefore, is a way of noting the morally significant distinction between intention and side-effects.

This applies to the case at hand in this way. An act of *self-defense* may have two effects, one intended, the other not. One’s intention can be one’s own safety by an act of force proportionate to render the aggressor incapable of doing harm. Sometimes *lethal* force is necessary to stop an aggressor. In such a case the death of the aggressor is a legitimate unintended side-effect of an otherwise legitimately intended act of self-defense.

‘Double-effect’ reasoning is used in the *Catechism* to situate its discussion of capital punishment -- to situate, in fact, its discussion of every form of legitimate killing. The subsection entitled “Legitimate defense”, in which capital punishment is treated, does not leave this context until we reach paragraph 2266, the section immediately preceding the section on capital punishment. The first paragraph in the subsection, number 2263, introduces ‘double effect’ reasoning to show that not all actions which result in killing are intentional killing and forbidden by the Commandment;¹³ the next paragraph, no. 2264, applies ‘double-effect’ reasoning to lawful killing in self-defense;¹⁴ and no. 2265 applies the same reasoning to the right and duty of anyone “responsible for the lives of others” to defend

defend the civil community against foreign aggressors).¹⁵

When we get to 2266, the context changes.¹⁶ The text here considers the nature of punishment in general and the state's basic right to inflict it. The section specifies three aims, or purposes of punishment, the *primary* purpose being to "redress" (correct, amend) the disorder introduced by a criminal's deliberate crime; we called this purpose above, punishment's *retributive* purpose. Two secondary aims are also mentioned, namely, criminal reformation and societal self-defense. In saying that retribution is primary, the *Catechism* tells us that punishment, while not excluding forward looking non-retributive purposes from its broader definition, is essentially defined by being an act of retribution, i.e., an act that responds to and corrects something that has happened in the past. While it would make sense to call an act 'punishment' that had no other purpose than to respond to an already committed crime by striking back, so to speak, at the one who committed it; it would not be appropriate to refer, say, to an act of 'striking-back' at an aggressor in self-defense as punishment. Self-defense is a response to a crime in progress or being contemplated, punishment, a response to crime that has already been committed. To intend retribution without intending self-defense is still to intend punishment; the opposite is not the case. But as I have shown above, when we turn to 2267, the conditions for a morally legitimate exercise of 'capital punishment' (so called in the section) do not conform to the *Catechism's* own definition of 'punishment' specified in 2266, but rather to 'self-defense' as defined in sections 2263-2265. The text insists that recourse to killing is legitimate if and only if the need to defend people's lives and safety against the attacks of an unjust aggressor can be met by *no other means*, i.e., execution is the absolutely necessary means of effectively rendering an aggressor incapable of doing harm. Let me be clear on what I am saying: according to the *Catechism's* own definition of punishment, the act defined as *poena mortis* (capital punishment) in number 2267 is not in fact an act of punishment, but rather an act of collective self-defense on the community's behalf by the state.

Perhaps the clearest indication in support of my interpretation is seen when we compare the treatment of the death penalty outlined in the 1992 edition of the *Catechism* with the text of the 1997 *editio typica*. In 1992 the *Catechism* taught the following:

the Church has acknowledged as well-founded the right and duty of legitimate public authority to punish malefactors by means of penalties commensurate with the gravity of the crime, **not excluding, in cases of extreme gravity, the**

This sentence can plausibly be understood as teaching that the *gravity* of a crime can be a legitimate basis for the infliction of the death penalty. In other words, some crimes, because of their extreme gravity (i.e., the magnitude of their wickedness and damage) can be *deserving* of the death penalty. This interpretation of no. 2266 as it stood in 1992 is made more plausible by the fact that the Church had taught the same for centuries. What is remarkable is that in the 1997 definitive edition the clause which reads, “not excluding, in cases of extreme gravity, the death penalty”, *is suppressed*. The revised section reads:

The efforts of the state to curb the spread of behaviour harmful to people’s rights and to the basic rules of civil society correspond to the requirement of safeguarding the common good. Legitimate public authority has the right and the duty to inflict punishment proportionate to the gravity of the offense. Punishment has the primary aim ... (1997 *editio typica*, no. 2266)

Limiting the morally permissible exercise of capital punishment to norms normally invoked for the guidance of acts of private self-defense, section 2267 concludes that “the cases in which the execution of the offender is an absolute necessity {*absolute necessarium*} ‘are very rare, if not practically non-existent.’” The last statement is of course taken directly from the papal encyclical *Evangelium Vitae*.

The conclusions I find in the *Catechism’s* account are not stated *explicitly* in its text. The text rather lays the theoretical groundwork for a development of doctrine on the morality of capital punishment to be fully articulated at a later time. That doctrine would at minimum state that judicial killing, to the extent that it serves the purpose of retribution (i.e., to the extent that it aims to redress the disorder introduced by deliberate crime by intentionally killing the one responsible for the disorder -- i.e., to the extent that it is *punishment*), is wrong.

How, we might ask, does this conclusion correspond to the Church’s traditional teaching on the subject?

C. The Church’s ‘traditional’ teaching:

If one considers chronologically the most significant and influential statements on the

propositions which summarize what we might call the *cumulative consensus* of patristic, medieval and modern ecclesiastical writers. These propositions include:

A) lawful public authority alone is authorized by God to inflict the death penalty;

B) this truth is witnessed to in Sacred Scripture;

C) the death penalty serves:

1^o) to redress disorder caused by an offense by imposing on offenders proportionate and due punishment,

2^o) to protect society by removing a harmful influence, and to deter other members of the community from committing serious crime;

D) clerics are forbidden from participating in the sentencing and inflicting of capital punishments; and

E) the death penalty's lawful infliction requires an upright intention.

I said these reflect the *cumulative* consensus, not *universal* consensus. The one premise, however, which is found throughout, representing the virtually unanimous agreement of authors from the time of the Apostles to the modern period, is this: *civil authority, as guardian of the public good, has been given by God the right to inflict punishments on evildoers, including the punishment of death.* Avery Cardinal Dulles in his Fordham University *McGinley Lecture* last October says: "I know of no official statement from popes or bishops, whether in the past or in the present, that denies the right of the State to execute offenders at least in certain extreme cases." If we could query Christian authors back to the Fathers on the origin of their judgment, the reply in the first place would be: *Divine Revelation.* In the minds of everyone from Origen, Ambrose and Augustine, to Gratian, Aquinas and Innocent III, to Robert Bellarmine, Thomas More and Alphonsus Ligouri, to John Henry Newman and Pius XI, the state's right to exercise lethal authority is taught by God in Sacred Scripture (particularly in St. Paul, see Rom. 13:1-4), hence to deny it would be to deny Revelation itself. Cardinal Dulles notes that even the US bishops in their influential "Statement on Capital Punishment" in 1984, as well the late Cardinal Bernardin in his now famous speech at Fordham University on the "Consistent Ethic of Life" concur in their judgement that "the State has the right to inflict capital punishment."¹⁸

D. The question of doctrinal development:

Would it be legitimate then to refer to the current position as a 'development of doctrine' relative to the traditional position? Not if we understand 'development of doctrine'

18. See also the *Statement on Capital Punishment* (1984) and the *Consistent Ethic of Life* (1988).

Doctrinal development begins as a partial and imperfect understanding of revealed truth, living by faith in the mind of the Church. Because of revelation's definitive and fully determined character—as Vatican II says, “no new public revelation is to be expected before” the return of Jesus Christ (*Dei Verbum*, 4), whatever is not at first explicit (or, rather, understood explicitly) is nevertheless already indicated in the explicit; prompted by the contingencies of history and culture and the impulses of a living faith, new and up till now implicit aspects of the content of revelation, under the guidance of the Holy Spirit, emerge from the deposit of faith into the consciousness of the Church making way for a fuller and more perfect understanding (and hence verbal expression) of the divine mystery, **while all the time maintaining continuity with antecedent principles and types.**²⁰

By now it should be clear that the continuity we would expect between the moral judgement anticipated in the *Catechism* and the Church's traditional teaching is lacking. At very least, the traditional teaching holds that lawful public authority is authorized by God to foresee, plan and inflict capital punishments on duly convicted criminals. The conclusion I see anticipated in the *Catechism* says that no crime, no matter how grave, is sufficient warrant for killing a human person; the only justifiable reason for killing the guilty is that while incarcerated they *still pose a grave threat* to the body politic.

E. Can we go there?

If it would *not* be legitimate to refer to the current position as an organic ‘development of doctrine’, could the Church, *nevertheless*, limited by the requirements of sound biblical interpretation and dogmatic tradition, now or at some time in the future, justifiably teach in an authoritative way that capital punishment is always wrong? That is to say, can the Church ‘change’ its fundamental position? We can word this another way: is the traditional Catholic teaching on the morality of capital punishment bound by an irreformable tradition, as is, say, the moral teaching on the intentional killing of the innocent?

This delicate question would no doubt be answered differently by different theologians based on the assumptions held about the nature of Catholic moral teaching. Some would conclude that the sheer magnitude of the Catholic consensus, stretching from the dawn of the Christian Church up until yesterday, agreeing on one judgement on the morality

would say that the Church, having amended judgements in the past on difficult moral questions -- say, for example, the question of the legitimacy of coercing heretics back to right belief, has set a precedent which justifies it in changing its judgement in the present on an issue like capital punishment. Both views it seems to me have weaknesses. The first threatens to deal simplistically with the complicated and necessary task of Catholic theology to consider the extent to which the Magisterium's authority is engaged in each legitimate exercise of Church teaching.²¹ The second threatens to be dismissive of the divine assistance which accompanies the Magisterium, even in its moral teaching and even in its non-infallible teaching capacity.

So back to the question. Could the Church be justified in changing its teaching? The Church's liberty to propose in the present a judgement which contradicts a judgement(s) from the past depends in part on the authoritative nature of the past judgement(s), in particular, whether any particular statement asserting this judgement, or the 'traditional' teaching as a whole, has been proposed infallibly. In order therefore to *wholly* answer the question nothing less than a consideration of all extant authoritative statements from Catholic tradition on the subject would be required. This obviously is beyond our scope. But permit me to say a few words in this regard.

Vatican II teaches that doctrine can be infallibly taught in three ways, (1) by the pope when he speaks *ex cathedra*, i.e., when acting in his capacity as supreme shepherd and teacher of the universal Church, he proclaims in a definitive act a doctrine of faith or morals, (2) by the pope and bishops gathered together in a general council when they teach definitively on a matter of faith or morals, and (3) by the ordinary and universal Magisterium of the Catholic Church, i.e., when the bishops, dispersed throughout the world, united in a bond of communion among themselves and with the successor of Peter, agree on a judgement as one to be definitively held.²² Assertions proposed in any of these three ways are, according to Catholic teaching, protected from error by the Holy Spirit and hence are known to be true and irreformable.

Any moral judgment, therefore, *not* asserted in Sacred Scripture nor proposed in one of these three ways is not known with certitude to be true and therefore is *in principle* reformable. And therefore if none of the five propositions mentioned above specifying the Church's traditional teaching on the permissibility of capital punishment have been asserted in the bible, or otherwise proposed infallibly, then the Church's traditional judgement on the morality of capital punishment can *in principle* be revised.

Church teaching is it can lead to a sort of theological positivism where non-infallible doctrines are treated as if they are without obligatory character.²³ This is not my intent. What is at stake is whether or not the traditional teaching on capital punishment is true. Identifying the conditions for a legitimate exercise of infallibility is one way to provide an answer. If it has not been proposed infallibly, the question *in principle* remains open. One might argue that even if it turns out to be non-infallible, its status in the tradition is such that a subsequent revision, even by an authoritative source, would be required to provide a satisfactory demonstration of its insufficiency. Fair enough, but this is beyond my purpose. *The evidence suggests a fundamental revision is on the horizon.* My point here is to judge whether such a revision is possible. If and when the Church were to take a next step, a more thorough authoritative *apologia* for the revision (i.e., more thorough than we find in the *Catechism of the Catholic Church* and *Evangelium Vitae*) may well be expected.

I would like now to consider with you a few important examples from the tradition where the death penalty's legitimacy has been taught (or thought to have been taught), and illustrate for you the kind of work Catholic theology undertakes in considering the degree to which authority is engaged in the Church's making of formal statements on matters of faith or morals.

Two papal statements in particular deserve attention. The first, by Pope Leo X, in his Bull *Exsurge Domine* (1520), condemns a number of propositions ascribed to Martin Luther, among which is included the following: "That heretics {*haereticos*} be burned is against the will of the Spirit {*contra voluntatem Spiritus*}."²⁴ How do we determine the authority of this statement? First, we consider the document in which it is made, viz., a papal Bull. A Bull is an ecclesiastical document issued by a pope (sealed with a *bull*, i.e., a round seal), addressing points of doctrine; its scope is generally limited to specific ideas or trends, but its audience is generally the universal Church. Bulls often contain solemn condemnations of points judged to be dangerous to the Christian faith. It is not uncommon for theologians to judge that the definitions contained in papal Bulls have been promulgated with infallible authority.²⁵ Let's say for argument's sake that the censures contained in *Exsurge Domine* have been infallibly proposed. Does it follow that the *falsity* of Luther's proposition also has been infallibly proposed, implying that the burning of heretics is *not* against, or not always against, the will of the Holy Spirit? Before we can judge this we need to examine the nature of the papal censure. Following the list of Luther's 41 problematic propositions, the Bull reads: "All and each of the above mentioned articles or errors, so to speak, as set before you,

or offensive to pious ears, or seductive of simple minds, and in opposition to Catholic truth.”²⁶ The precise language justifies us in concluding no more than that the proposition is among a set of articles whose members are either heretical *or* scandalous *or* false *or* offensive to pious ears *or* seductive of simple minds, and are obstructive to Catholic truth. So the answer to the question whether the falsity of Luther’s statement has been infallibly proposed in *Exsurge Domine* is negative.

The second statement, made by Pope Innocent III in the early 13th century, is arguably the most influential ecclesiastical statement on the morality of capital punishment in Church history. It falls in a profession of faith aimed at reconciling to the Church several members of a heretical sect known as the Waldensians.²⁷ The oath was drafted originally in 1180 (or 1181),²⁸ and first used by the pope for reconciling Waldensians in 1208.²⁹ The 1180/1208 version makes no reference at all to the authority of the state to kill criminals. In 1210 Innocent amended the profession adding, for reasons which are uncertain, the following statement:

We declare that the secular power can without mortal sin impose a judgment of blood provided the punishment is carried out not in hatred, but with good judgement, not inconsiderately, but after mature deliberation.³⁰

With what authority was this statement proposed, or rather, was the profession of faith in which it appears proposed? Given that the profession is directed to a particular group (i.e., the breakaway group of Waldensians) and not to the universal Church, and that its promulgation is by means of personal disciplinary letter, not by means of a Bull or otherwise universally authoritative document, not all the assertions in it should be taken as articles of faith, even though some of them *already* have been defined as articles of faith. If therefore one of its propositions is not already a defined doctrine, the presence of that proposition in the oath to the Waldensians does not alone suffice to constitute it as such. It is therefore my judgement that Innocent’s statement does not constitute an infallible definition.

What about the traditional conclusion that the death penalty’s legitimacy has been taught in Sacred Scripture and hence is part of Divine Revelation? (After all, death is prescribed nearly fifty times for more than twenty offenses throughout the various law codes of the Pentateuch.)

Examining this question relative to the moral teaching of the Old Testament, the

distinguishes between the ‘moral’ precepts of the Old Law (i.e., Old Testament) and its merely ‘ceremonial’ and ‘judicial’ precepts. The Old Law’s moral precepts {*praecepta moralia*}, Aquinas says, given to the people by “God Himself {*per seipsum*}”, relate by their very nature to good morals and hence are part of the natural law. They can be reduced, Aquinas tells us, to the Ten Commandments. The remaining precepts of the Old Law -- given “through Moses {*per Moysen*}” -- are “ceremonial and judicial {*caeremonialibus et iudicialibus*}”.³¹ With the coming of Christ, the ceremonial and judicial precepts passed away, leaving the Old Law’s moral precepts alone to endure into the Christian dispensation. If this distinction is sound, then all the precepts taught in the legislative part of Deuteronomy, in the Covenant Code and in the Priestly and Holiness Codes, i.e., virtually all the places in the Pentateuch where death is prescribed, are either ceremonial or judicial precepts. We are left, then, with the Fifth Commandment as the only Old Testament *moral* precept dealing with life and death. And though it has been traditionally interpreted to refer only to the innocent, the precept itself tells us no more than not to kill.

Coming to the New Testament, we find passages apparently supporting as well as opposing bloody punishment. On the one hand, we see the ‘good thief’ in Luke’s account of the crucifixion announcing that he and his partner are “justly . . . receiving the due reward” for their crimes (Lk 23:41), and Jesus leaving the statement unopposed. On the other hand, we see Christ in John 8 apparently rescinding the Mosaic punishment of death for adultery when he turns the accusations of the mob, thirsty for the adulteress’ blood, back on themselves by confronting them with their own guilt. Passages like these can be multiplied.

But what are we to do with the well-known passage from Romans 13, which reads:

For (public) rulers are not a terror to good conduct, but to bad. Would you have no fear of him who is in authority? Then do what is good, and you will receive his approval, for he is God’s servant for your good. But if you do wrong, be afraid, **for he does not bear the sword in vain**; he is the servant of God to execute his wrath on the wrongdoer. (vs. 3-4; emphasis added)

Surely this is an example of Divine Revelation asserting the legitimacy, at least in principle, of the state’s power to kill evildoers? As transparent as it seems, most contemporary biblical scholars *do not* interpret the term ‘the sword’ in vs. 4 as having reference to capital punishment, but rather as a metaphor for the general coercive authority of the state.³² And

Addressing a congress of Italian Catholic jurists, he writes:

the words of the sources [of Revelation] and of the living teaching power *do not refer to the specific content of individual juridical prescriptions or rules of action* (cf. particularly Rom. 13:4), but rather to the essential foundation itself of penal power and of its immanent finality.³³

The Pope says in essence that to get to the heart of Divine Revelation's teaching on the nature of civil authority's penal power, the place to look is *not* in specific rules of action – he singles out Romans 13:4, but rather to the foundation of civil authority in general (i.e., in the authority of God) and its right to defend the common good through the infliction of punishment.

This brief and admittedly selective exercise in theological exegesis illustrates the kind of work necessary for resolving the larger question of the authority of the traditional Catholic teaching on capital punishment. Having considered with you tonight certain of the chief doctrinal examples in the tradition, and having done so elsewhere with many other significant statements,³⁴ it is my judgment that, despite the chronicity and uniformity of the traditional conclusion on the morality of capital punishment, the conditions necessary for an infallible exercise of the Church's teaching authority have not been met. It follows that a rethinking of the traditional teaching along the lines I have described is possible, and that the conclusions I find implicit in the *Catechism's* account *could* be made explicit without in any way compromising the integrity of Catholic doctrine.

F. Why the change?

The act of killing Timothy McVeigh, like his (and Terry Nichols') act of blowing up the Murrow Federal Building in Oklahoma City, has been conceived and planned in advance, and will be carried out with full deliberation and intent. His killing will be participated in (morally speaking) by everyone from the federal prosecutor and his assistants who petitioned for and secured his sentence, to the judge who mandated the sentence, to the US

for clemency, to the federal prison warden, at whose command the poison is administered. Each will be, as it were, *accomplices* in his killing. And if what I have said tonight is correct, each, according to Catholic moral teaching, will be accomplices to a morally bad act.

Why might the Church consider an act of judicial killing bad, even when carried out with all necessary due process and assurance of distributive fairness? We might venture an answer by looking at the philosophical system of thought used by John Paul II, viz., *Personalism*. Since his elevation to the Chair of Peter in 1978 he has not ceased to remind the Church and the world of the godlike nature and priceless dignity of the human person -- every human person, even one whose actions are most loathsome and wicked. In these admonitions, the pope has used unprecedentedly strong language, language, it seems to me, that relocates the boundary lines circumscribing legitimate killing. Throughout the encyclical *Evangelium Vitae*, for example, the good of 'human life' and its derivative rights are referred to with terms like *inviolability*, *inviolable* and *inalienable*. For example, the pope says he is providing "a *precise and vigorous reaffirmation of the value of human life and its inviolability*" (no. 5); the encyclical speaks elsewhere of "the original and inalienable right to life" (no. 20); and again of "the sacredness and inviolability of human life" (no. 53); examples like these can be multiplied.³⁵ In only three instances is the scope of application limited to *innocent* human life.³⁶ The rest are unqualified. One particularly noteworthy instance reads:

human life is sacred and inviolable at *every* stage and in *every* situation; it is an indivisible good. (No. 87, emphasis added)

A second states:

(The *Hippocratic Oath*) requires every doctor to commit himself to *absolute respect* for human life and its sacredness. (No. 89, emphasis added)

Still another says:

forceful appeal for respect for the **inviolability of physical life** and the integrity of the person. (No. 40, emphasis added)

Language like this is not used in this way in Catholic tradition before the twentieth century and does not find prominence in papal writings before John XXIII's encyclical *Pacem In Terris* (1963). Though the tradition has always affirmed the absolute immunity of *innocent* human life from intentional attacks and destruction, this 'inviolability' has traditionally been understood to be forfeited by one who conscientiously chooses to carry out certain kinds of behavior. The tradition is quite clear that the lives of those who deliberately commit serious crimes are *not inviolable*. Aquinas says a grave sinner 'falls' from human dignity and may be treated as a beast,³⁷ Pius XII says a dangerous criminal, "by his crime, . . . has been dispossessed of his right to live."³⁸ In both cases, the malefactor's life through his own deliberate act *becomes* violable. This is clearly *not* the teaching of the *Catechism*, nor *Evangelium Vitae*. In fact, John Paul II emphatically states in the latter that, "*Not even a murderer loses his personal dignity*" (No.9). The intentional and unalterable destruction of human life which capital punishment entails is hard to reconcile with the language used in these instances to specify the moral claim that human dignity makes on our choices and the behaviors that carry them out.

G. Conclusion:

I have touched upon a few important points of the Church's capital punishment debate, none of which were treated exhaustively and several of which, I'm sure, only served to raise further questions. But if by this exercise I have led you to conclude that the issues at stake are more complicated and multi-faceted than they once seemed, and that at least *something new* is going on in Church's relationship to the problem of capital punishment, then one purpose for my talk will have been fulfilled. And I'll have the satisfaction of knowing that fewer careless statements will be made about *what's going on with Catholic Church and the death penalty*.

² George Bernard Shaw, “Capital Punishment,” *The Atlantic Monthly* (June 1948); available at <<http://www.theAtlantic.com/atlantic/atlweb/flashbks/death/dpenshaw.htm>>

³On April 19, 1995, around 9:03 a.m., a massive bomb inside a rental truck exploded, blowing to pieces half of the nine-story Alfred P. Murrah Federal Building in downtown Oklahoma City. 168 people, including 19 children, were killed and 500 injured in the worst terrorist attack on U.S. soil. In June 1997 a jury found Timothy McVeigh guilty of the act; he was subsequently sentenced to die by lethal injection.

⁴Following their examples, Pius XII, in 1953, appealed to U.S. President Harry Truman on behalf of Julius and Ethel Rosenberg sentenced to death for espionage.

⁵Since 1980 the U.S. bishops alone have issued—personally or collectively—over 214; most are listed in the *Bibliography of Statements by U.S. Catholic Bishops on the Death Penalty: 1972-1999*, compiled by Catholics Against Capital Punishment (Arlington, Va., 1998); available at <<http://www.igc.org/cacp/biblio.html>>

⁶Sections 2263-67, *Catechismus Catholicae Ecclesiae (editio typica Latina)* (*Catechism of the Catholic Church* [hereafter *Catechism*]) (Rome: Libreria Editrice Vaticana, 1997). The original edition— in French— was released in 1992 and the English translation of the French in 1994. In September 1997, with the revisions of the first edition complete, the definitive Latin text was promulgated by Pope John Paul II. English references unless otherwise indicated are from the English translation of the *editio typica* (i.e., the 1994 Vatican approved English translation of the 1992 French edition with the inclusion of the additions and changes required by the 1997 *Corrigenda* (Amendments to the 1992 Edition, Vatican English translation)).

⁷The *Catechism*'s predecessor, the 1566 *Roman Catechism*, prepared pursuant to a decree of the Council of Trent, treats capital punishment under a subsection headed “exceptions” to the Fifth Commandment. [*Catechism of the Council of Trent for Parish Priests*, part III, cap. VI, par. 4, tr. John A. McHugh, O.P. and Charles J. Callan, O.P. (New York: Joseph F. Wagner, Inc., 1923), 421.] And most systematic treatises, at least since Trent, follow Aquinas and treat it under the heading, ‘whether it is lawful to kill malefactors’, or something similar. [“*Utrum sit licitum occidere homines peccatores*”, Aquinas, *Summa Theologiae (ST)*, II-II, q. 64, a. 2; other examples include Thomas Cardinal Cajetan, Commentary on q. 64, a. 2, from Commentaries of Thomas Cajetan, in Aquinas, *Opera Omnia*, tom. IX, Leonine ed. (1897), p. 69; Juan Cardinal De Lugo, “*De justitia et jure*,” *Disputationes Scholasticae et Morales* (Paris, 1893), disp. 10, sec. 2, par. 56, p. 69; Cardinal Bellarmine, *De Laicis sive Saecularibus (De Laicis)*, tr. Kathleen E. Murphy (Connecticut: Hyperion Press, Inc., 1928), ch. 13, p. 54.]

⁸Aquinas’ term is repeated constantly throughout the tradition in treatments of legitimate acts of killing in *self-defense*; e.g., Alphonsus Marie de Liguori, *Theologia Moralis*, tom. 1, lib. 3, tract. 4, cap. 1, dub. 3, par. 380 (Rome: Ex

Typographia Vaticana, 1905); M. Zalba, S.J., *Theologiae Moralis Compendium*, vol. 1 (Madrid: Biblioteca De Autores Cristianos, 1958), no. 1591, p. 871; I. Aertnys, C.S.S.R. and C. Damen C.S.S.R., *Theologia Moralis* (Rome: Marietti Editori Ltd., 1956), tom. I, lib. III, tract. V, cap. III, no. 571, p. 541.

⁹“*Causa legitimae tutelae contra iniustum aggressorem, si debitum servetur moderamen, delictum omnino aufert; secus imputabilitatem tantummodo minuit, sicut etiam causa provocationis.*” *Codex Iuris Canonici* (1917), can. 2205, § 4; “*legitimae tutelae causa contra iniustum sui vel alterius aggressorem egit, debitum servans moderamen*”; “*ab eo, qui legitimae tutelae causa contra iniustum sui vel alterius aggressorem egit, nec tamen debitum servavit moderamen*”; John Paul II, *Codex Iuris Canonici* (Vatican City: Libreria Editrice Vaticana, 1983), can. 1323, 5^o, 1324, 6^o.

¹⁰Aquinas, *ST*, II-II, q. 64, a. 7c, ad. 4; Alphonsus De Ligouri, *Theologia Moralis*, tom. 1, lib. 3, tract. 4, cap. 1, dub. 3, par. 380, p. 631; Zalba, S.J., *Theologiae Moralis Compendium*, vol. 1, no. 1591, p. 869; McHugh, and Callan, O.P., *Moral Theology: A Complete Course*, vol. 2 (New York: Joseph F. Wagner, Inc., 1930), no. 1828, p. 105; Aertnys, Damen, *Theologia Moralis*, tom. I, lib. III, tract. V, cap. III, no. 571, p. 541; A.J.J.F. Haine, *Theologiae Moralis* (Rome: Desclée, 1900), 4th ed., tom. I, pars II, cap. III, 1_, q. 130, p. 453; Dominic M. Prümmer, O.P., *Handbook of Moral Theology* (Cork: The Mercier Press, Ltd., 1956), p. 127; Genicot, S.J., *Institutiones Theologiae Moralis* (Brussels: Alb. Dewit, 1927), vol. I, tract. VI, sect. V, cap. II, no. 366, p. 296; note the ambiguity in Scavini’s use of the term “*solam necessitatem*”, Petro Scavini, *Theologia Moralis Universa* (Paris: Jacobum Lecoffre, 1863), tom. III, tract. VII, disp. II, cap. I, art. I, no. 75, q. 7, p. 74.

¹¹See Aquinas *ST*, II-II, q. 64, a. 7c.

¹²John Finnis, *Aquinas* (Oxford University Press, 1998), 27.

¹³“The legitimate defense of persons and societies is not an exception to the prohibition against the intentional killing of the innocent that constitutes murder. “The act of self-defense can have a double effect: the preservation of one’s own life; and the killing of the aggressor.... The one is intended, the other not.”^{nt} (nt Aquinas *ST*, II-II, 64, 7c)” (No. 2263)

¹⁴“Love toward oneself remains a fundamental principle of morality. Therefore it is legitimate to insist on respect for one’s own right to life. Someone who defends his life is not guilty of murder even if he is forced to deal his aggressor a lethal blow:

“If a man in self-defense uses more than necessary violence, it will be unlawful: whereas if he repels force with moderation, his defense will be lawful.... Nor is it necessary for salvation that a man omit the act of moderate self-defense to avoid killing the other man, since one is bound to take more care of one’s own life than of another’s.”^{nt} (nt Aquinas *ST*, II-II, 64, 7c)” (No. 2264)

¹⁵“Legitimate defense can be not only a right but a grave duty for one who is responsible for the lives of others. The defense of the common good requires that an unjust aggressor be rendered unable to cause harm. For this reason, those who

legitimately hold authority also have the right to use arms to repel aggressors against the civil community entrusted to their responsibility.” (No. 2265)

Although the context has changed from addressing the needs of an individual to those of a community, and from the right of an individual to defend his own life to the rights and duties of public authority to defend the community for which it is responsible, the context is otherwise the same. We are still referring to the need (previously individual, and now corporate) to repel an aggressor and the requirement that in doing so only force necessary to render him unable to cause harm is to be used. The act mentioned here is, like before, an act of self-defense. While 2265 does not explicitly state that any death following from this act of self-defense must be unintended, the reference to collective self-defense in 2263 requires that that be the meaning of 2265. The *Catechism* certainly supplies no basis for saying that the death of an aggressor following from an act of collective self-defense as described in this paragraph may be deliberately intended.

¹⁶“The efforts of the state to curb the spread of behaviour harmful to people’s rights and to the basic rules of civil society correspond to the requirement of safeguarding the common good. Legitimate public authority has the right and the duty to inflict punishment proportionate to the gravity of the offense. Punishment has the primary aim of redressing the disorder introduced by the offense. When it is willingly accepted by the guilty party, it assumes the value of expiation. Punishment then, in addition to defending public order and protecting people’s safety, has a medicinal purpose: as far as possible, it must contribute to the correction of the guilty party.” (No. 2266)

¹⁷By ‘authoritative’ I refer not only to propositions asserted in formally authoritative ways (e.g., the statements of popes and ecumenical councils), but also to ones which are *de facto* authoritative by virtue of the influence and import of the works in which they are expressed, e.g., the *Decretum Gratiani* and *Dictionnaire De Théologie Catholique*, or by virtue of the influence and import of the authors who asserted them, e.g., the Church Fathers and Aquinas.

¹⁸Avery Dulles, S.J., *The Death Penalty: A Right to Life Issue?*, Laurence J. McGinley Lecture, 17 October 2000, Fordham University, 10. Fr. Dulles says that John Paul II would likewise concur in this judgement, but unfortunately makes no reference to the pope’s treatment of capital punishment in *Evangelium Vitae* 56, nor ever even references the account found in the *Catechism of the Catholic Church*.

¹⁹The primordial work on the notion of doctrinal development is by **Vincent of Lerins** (d. c. AD 445), *A Commonitory: For the Antiquity and Universality of the Catholic Faith Against the Profane Novelties of All Heresies*, ch. 1, par. 3, ch. 2, par. 4 (*Nicene and Post-Nicene Fathers, Series II*, vol. 11, 132); the most extended and perhaps most famous work is **John Henry Newman’s**, *An Essay on the Development of Christian Doctrine* (1st pub. 1848) (University of Notre Dame Press, 1989). The basic ideas of Vincent and Newman are repeated in the following ecclesiastical documents: **Vatican I**, *Dei Filius*, ch. 4 (*Documents of the Ecumenical Councils (DEC), Vol. II*, 809), **Pius XI**, *Mortalium animos*, AAS (1928), 14, **Pius XII**, *Humani Generis* (1950) (*Denz.*, 2314), **Vatican II**, “Dogmatic Constitution on Divine Revelation” (*Dei Verbum*), no. 8 (*DEC-II*, 974), Pastoral Constitution, *Gaudium et Spes* (no. 62) (*DEC-II*, 1112). A fine contemporary theological exploration of the idea of doctrinal development is **Henri de Lubac’s** “Le problème

du développement du dogme,” *Recherches de science religieuse* 35 (1948), 130-160; tr. “The Problem of the Development of Dogma,” in *Theology in History* (San Francisco: Ignatius Press, 1996), 248-80.

²⁰This definition is adapted from one found in my doctoral dissertation: *Capital Punishment, Abolition and Roman Catholic Moral Tradition*, University of Oxford, Trinity 2000, 256-57. This definition applies to doctrines of faith and doctrines of morality; John Paul II writes in *Veritatis Splendor*, par. 28, that doctrinal development in the Church’s moral teaching is “analogous to that which has taken place in the realm of the truths of faith.” It can be applied by extension also to what are sometimes referred to as ‘secondary objects of infallibility’, i.e., non-revealed truths necessarily connected to revealed truths; see *Ad Tuendam Fidem*, no. 3, as well as Cardinal Ratzinger’s *Commentary on Profession of Faith’s Concluding Paragraph* (June 1998), par. 6, *Origins* (July 1998), vol. 28, no. 8, p. 117.

²¹“One must therefore take into account the proper character of every exercise of the Magisterium, considering the extent to which its authority is engaged.”
Congregation for the Doctrine of the Faith, *Instruction on the Ecclesial Vocation of the Theologian* (24 May 1990) (Boston: St. Paul Books and Media), no 17.

²²*Lumen Gentium*, no. 25.

²³See Vatican II, *LG*, no. 25, Pius XII’s statement on the teaching authority of encyclical letters, *Humani Generis*, 1950 (*Denz.* 2313) and the instruction of the CDF, *Ecclesial Vocation of the Theologian*, 23, 24, 33.

²⁴*Denz.* 773.

²⁵According to Francis A. Sullivan, S.J., theologians Louis Billot, in his work *Tractatus de Ecclesia Christi* (1898), and Edmond Dublanchy, in his article on infallibility in the *Dictionnaire de Théologie Catholique* (1927), judged there to be “dogmatic [i.e., irreformable] definitions” in *Exsurge Domine* (1520). Sullivan does not specify which articles singled out in the bull fall into this category. Sullivan’s judgement on the matter is “that *Exsurge Domine* does not meet the requirements for a dogmatic definition.” See Sullivan, *Creative Fidelity: Weighing and Interpreting Documents of the Magisterium* (Dublin: Gill & Macmillan, Ltd, 1996), 84-85.

²⁶*Denz.* 781.

²⁷The sect took its name from its twelfth century founder, an erstwhile Lyonnais merchant, Waldes, who having undergone a conversion not unlike Francis of Assisi, went about gathering followers and preaching a gospel of evangelical freedom. For an introduction to the rise of the Waldensian heresy in the twelfth century see Malcolm Lambert, *Medieval Heresy: Popular Movements from the Gregorian Reform to the Reformation*, Second Edition (Oxford: Blackwell, 1992), 62-87.

²⁸It was drafted by Waldes himself at a time when he was attempting to prove his orthodoxy before certain members of the Lyonnaise hierarchy.

²⁹The oath of December 1208 is preserved in a letter of Innocent III’s dated the 18th

alerting them to the reconciliation of Durand, the leader of the breakaway group, and his followers; [for the letter see *Innocenti III romani pontificis Regestorum sive epistolarum libri XV, XI.196* and translated in Walter L. Wakefield and Austin P. Evans, in *Heresies of the High Middle Ages (HHM)* (New York: Columbia University Press, 1969), 222-226; the letter appears in Migne, *Patrologia Latina (PL)*, tom. CCXV, cols. 1510A-1513d, although it is dated 15 Jan. 1209]; two copies of Innocent's 1208 letter were made, one sent to Durand himself and the other to certain laymen supervised by the Poor Catholics [(*Regesta XI.197, 198*; in Migne, *PL*, tom. CCXV, col. 1514); see also *HHM*, 716, n. 15].

³⁰“*De potestate saeculari asserimus quod sine peccato mortali potest iudicium sanguinis exercere, dummodo ad inferendam vindictam, non odio, sed iudicio, non incaute sed consulte procedat.*” (*PL*, tom. CCXV, col. 1512a), my translation; the entire revised 1210 profession is translated in Denziger, *The Sources of Catholic Dogma*, tr. Roy J. Deferrari (London: B. Herder Book Co., 1954), nos. 420-427, esp. no. 425.

³¹Aquinas, *Summa Theologiae*, I-II, q. 99, q. 100, a. 1c, a. 3c.

³²For examples, see T.W. Manson, *Peake's Commentary on the Bible* (1962), 950 [825f], J. Fitzmyer, *The New Jerome Biblical Commentary* (1989), 864:119, F. Davidson and R. Martin, *The New Bible Commentary Revised* (1970), 1041, for a more thorough treatment of the passage, see G. R. Cragg and J. Knox, *The Interpreter's Bible*, vol. IX (1954), 598-604; one exception is E. Best, “The Letter of Paul to the Romans,” *The Cambridge Bible Commentary* (1967), 148, he interprets the authority spoken of in verse 4 as including “the right to enforce their punishments even to the extent of putting men to death.”

³³Pope Pius XII, *Address to the Italian Association of Catholic Jurists*, 5 Dec. 1954; translation, *Catholic Mind*, vol. 53 (1955), 381, emphasis added.

³⁴See Brugger, *Capital Punishment, Abolition and Roman Catholic Moral Tradition*, doctoral dissertation, University of Oxford, Trinity 2000, chs. 3-7.

³⁵The encyclical uses the terms a dozen or so times, including in the cover page title of the encyclical itself: “On the value and inviolability of human life” (*De vitae humanae inviolabili bono*). See nos. 5, 18, 20, 40, 53, 57, 60, 70, 71, 72, 81, 87, 96, 101; for the related word *sacred* (*sacredness*) see nos. 22, 62, 102.

³⁶Nos. 57, 60, 101.

³⁷*ST*, II-II, q. 64, a. 2, ad. 3.

³⁸“Il est réservé alors au pouvoir public de priver le condamné du *bien* de la vie, en expiation de sa faute, après que, par son crime, il s'est déjà dépossédé de son *droit* à la vie.” Pius XII, “*lis qui interfuerunt Conventui primo internationali de Histopathologia Systematis nervorum*”, *AAS* 44 (1952), 787.