

What does the rejection of the death penalty by Pope Francis mean? - some theological considerations

Prof. dr. Fred van Iersel

Pope Francis has decided to remove the moral acceptability of the death penalty from the Catechism of the Catholic Church (CCC). Surely no trifle. It is not a change of some sort of opinion about an incidental event, but a change of moral teaching, of ecclesial doctrine. In 1997, partly due to the influence of the worldwide organization of RC prison chaplains, ICCPPC, acceptability was reduced to a minimum of high exceptions.

Right to life

This year, 2018, the bill changes. From now on, the sentenced person's right to life comes first in weighing up the penalty. The reasons for the termination of moral acceptance are also layered. In addition to the protection of the life of every human being as image bearer of God, there is also the chance of errors in the convictions, the ineffectiveness of the general deterrent effect of the death penalty and the worldwide 'feeling of believers'.

This shift in social morality does not come out of the blue. Internationally - especially in the US - there is a widening of the 'pro life' movements from an anti-abortion movement to a movement that fights all forms of killing. This coalition formation has increased the influence of the movement against the death penalty.

No impunity

For the sake of clarity: the Vatican does not yet assume impunity for serious crimes. Nor is it the case that the Church now finds that all serious crimes must be forgiven by victims or their surviving relatives. It is strictly about the protection of life. The same reason why a murder should not be committed is the reason why the life of the murderer must be spared.

Task governments

This change in doctrine is extra interesting, because in the reasons why the death penalty can be abolished the perspective of secular governments (which determine and execute the punishment) is pushed to the background. That is very drastic. States have had a monopoly of violence since 1648. This is expressed in the right to have the armed forces, the police and the executioners execute violence. The death penalty was, so to speak, a privilege of states. It was therefore states that subsequently abolished the death penalty on legal and humanitarian grounds, so largely for reasons derived from secular visions.

What does the Church require of societies?

The concentration of this monopoly on the state was intended to protect the citizen against his own direction and lawlessness, and to guarantee the safety of citizens. Abolition of the death penalty in this perspective means that states are now faced with the task of doing so in a different way than through the death penalty. The obligation of appropriate criminal law, the obligation to protect citizens and the duty of care for victims and next of kin do not expire. The conversion of the death penalty to life-long (the most probable alternative) is an

expression of civilization: one does not want to repeat what one has had to undergo. But it is also a costly affair. That will lead to discussions in the societies concerned where the death penalty still exists. Can postmodern society, with its orientation towards victims, still have sufficient understanding for the civilized treatment of people who have escaped death and have life imprisonment? That is an exciting question.

And what about the 'just war' then?

At least as exciting is whether the approach to the just war - another government task related to the monopoly of violence - will disappear from moral learning. I expect that, albeit that this process is indeed going on, but is far from being completed. The right to self-defense in accordance with Article 51 of the UN Charter will continue to be recognized. But the question is whether the theory of just war as a moral doctrine is necessary for this. The criteria contained in this doctrine - necessity, regularity, proportionality, competent authority, chance of success, and last resort - can very well be incorporated in transformed form into a concept of just peace that includes the right of defense.

The reasons for the change of this chapter from social morality to the death penalty is based on a reconsideration of the prioritization of values, where the protection of life (the right to life as human rights) is paramount. In addition, the assessment of actual situations also plays a role, especially with regard to the probability of error in the convictions.

Clarifications of the crucifixion of Christ

The abolition of the death penalty also calls for a completely different theological question. Jesus Christ himself underwent the death penalty to then (pagan) Roman law.

The crucifixion of Jesus has always been the object of interpretation. Of course the crucifixion first and foremost had significance against the background of Jesus' life and mission, his wholesome actions as 'good shepherd', and his proclamation. The earliest Christianity saw - after the Emmaus experience - crucifixion above all as a consequence of his message and also - however physically real - as a symbolic summary of who Jesus is: the self-serving eschatological prophet and Messiah.

The interpretation of Jesus' life in early Christianity was mainly from the Easter experience: the resurrection from the dead was seen as the confirmation of Jesus' divine sonship and position as Messiah. Of course the question arose, what was the meaning of Jesus' way of dying in relation to the resurrection? A relatively late text from early Christianity such as the Gospel of John describes death and resurrection almost as a continuous movement, connecting the question to the redemptive meaning of the death of the cross.

The death penalty of Christ

Thus, according to early Christian tradition, that death penalty of Christ himself was not redeeming himself, but a phase in God's plan of salvation. The resurrection from the death of the "cornerstone that the builders rejected" (Psalm 118, 22) had to precede the death penalty, as well as the choice of Jesus not to withdraw from it and to take the road to Jerusalem itself. The understanding of the Messiah who "must suffer all this" (Lk 24:26) has always been difficult, as evidenced by the biblical story of the Emmaus people.

Permanent questions

What significance does the abolition of the moral acceptability of the death penalty have for the interpretation of the crucifixion of Jesus? By abolishing the acceptance of the death penalty, we are faced with the task of re-examining the interpretation of Jesus' death on the cross. The - in my opinion - correct moral insight to no longer accept the death penalty morally can certainly accelerate the farewell of a - to say with Dorothee Soelle 'sadistic' Deity - the image of a God who wants to suffer and even his own Son to cause death in the sense of this permission. The abundance of love from God becomes more understandable. God's permissiveness - permitting or using murder by God - does not fit in with that. Of course, the death penalty of Jesus in tradition has never been presented as redeeming, but more as a consequence of His calling and way.

Yet questions remain. They are evoked by the contribution of the Congregation of the Doctrine of the Faith to the papal decision. To ask these questions is not the same as answering them; but on the theological agenda they are in my view now inevitable, on the ground of the coherence of religious and ethical teaching.

Pilate

Especially in the Gospel of John, Pilate, with his decision to execute the death penalty of the innocent Jesus, is almost a figurant in the history of salvation, with Christ in the lead, who in a sense is not merely passively murdered, but rather gives his own life. How would this autonomous 'giving of life' by Christ have looked like without pagan - Roman death penalty? That is why two questions remain open: Could Jesus Christ have fulfilled his task in the history of salvation to the end without undergoing the death penalty (and exactly this form of it)? And: What does the fact mean that his death through crucifixion was a necessary phase in the wholesome history of Jesus' life, suffering, death and resurrection? Does this not include an indirect theological legitimacy of at least a single death penalty, namely that of the protagonist in salvation history, Jesus Christ?

Prof. dr. Fred van Iersel is special professor of spiritual care issues at the armed forces at Tilburg School of Catholic Theology (Tilburg University, The Netherlands), special moral theology teacher at Fontys FHTL in Utrecht (The Netherlands) and lecturer.