

# **St. Thomas Aquinas on Capital Punishment: Correcting Aquinas with Aquinas**

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## **I. Introduction**

In medieval Europe, St. Thomas Aquinas defended capital punishment as a legitimate means a political community could use to protect the common good. As such, Aquinas is still cited today to support the death penalty, especially within natural law ethics. This paper will examine the two primary arguments presented by St. Thomas to defend capital punishment, and demonstrate that both are inadequate when balanced against a proper understanding of human nature and the common good as expressed by Aquinas himself in other parts of his work. As such, this paper will not present an overall critique of capital punishment that might cite statistics related to judicial mistakes involving capital cases or that point out the disproportionate number of minorities currently on death row in the United States—all legitimate points. Instead, the philosophical arguments used to support capital punishment from Aquinas will be examined to show that these falter because they are based on dubious arguments which can be challenged by Aquinas' own writings. That is, Aquinas will be used to correct Aquinas.

## **II. Human Persons and the Common Good Within the Natural Law Tradition**

To understand the issues here, we must first discuss the nature of the human person and the common good within natural law ethics. In the natural law tradition there is a clear and precise metaphysical basis for the concept of a "person." Unfortunately, there is less clarity in contemporary American discourse because the terms "person" and the derivative notion of "personhood" have been given numerous social and political definitions. As a result, public debate regarding who is a person quickly gets confusing. To avoid problems, we must recall that the concepts of "person" and "personhood," like all concepts, are themselves grounded

upon a reality—in this case, the reality of actual human persons. St. Thomas clarifies this underlying reality in the *Summa Theologica*, I, Question 29, Article 1:

... in a more special and perfect way, the particular and individual are found in the rational substances which have dominion over their own actions; and which are not only made to act, like others; but which can act themselves; for actions belong to singulars. Therefore, also the individuals of the rational nature have a special name even among other substances; and this name is *person*.<sup>1</sup>

Later, in Article 3, he adds, “*Person* signifies what is most perfect in all nature—that is, a subsistent individual of a rational nature.”<sup>2</sup> From this line of thought is derived the commonly held view that all human beings possess intrinsic dignity and value. And so, in the natural law tradition the term person is not simply the reflection of a social or political designation, but rather person refers to a reality that exists independently of current social norms.

But what, then, is the proper relationship of all human beings—as rational natures with inherent dignity—to the social and political order? For this, we can turn to the work of the noted French Thomistic scholar, Jacques Maritain. In his book, *The Person and the Common Good*, Maritain accepts the classic position found in Aristotle and Aquinas that human beings are naturally drawn into society as a matter of survival. But in addition, the human person is drawn into society, “because of its very perfections, as person, and its inner urge to the communication of knowledge and love which require relationship with other persons.”<sup>3</sup> Without society, the human person would not be able to survive in the world, but more importantly, the human person would not be able to attain fulfillment. Thus, Maritain observes, “Society appears, therefore, to provide the human person with just those conditions of existence and development which it needs. It is not by itself alone that it reaches its plenitude but by receiving essential goods from society.”<sup>4</sup>

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<sup>1</sup> St. Thomas Aquinas, *Summa Theologica*, I, Q.29, a.1, *responsio*, *op. cit.*, literally translated by the Fathers of the English Dominican Province, Volume I (New York: Benziger Brothers, Inc., 1947), p.156.

<sup>2</sup> *Ibid*, a.3, *responsio*, p.158.

<sup>3</sup> Jacques Maritain, *The Person and the Common Good*, translated by John J. Fitzgerald, fourth printing (Notre Dame, Indiana: University of Notre Dame Press, 1985), p.47.

<sup>4</sup> *Ibid*, p.48.

Understanding this correlation of the person to society, Maritain explains, gives rise to the notion of the common good: “The common good is common because it is received in persons, each of whom is as a mirror of the whole. Among the bees, there is a public good, namely, the good functioning of the hive, but not a common good, that is, a good received and communicated.”<sup>5</sup> Human society is not simply composed of individuals, isolated from all other existing beings in time and space. A human thrives and flourishes in relationships, embodied in a range of societies, each with their own proper integrity—whether it be on the level of family, faith community, profession, or politically organized State. Within these various societies, human beings share a common good—not as individuals, but as members of the human community.

Balancing the interests of individual persons and the interest of a society in the practical world, however, raises a difficulty which Maritain terms the “paradox of social life.” He explains: “this paradox results from the fact ... that each of us is in his entirety an individual and in his entirety a person.”<sup>6</sup> As individuals, human beings are separated by virtue of our physical bodies from one another.<sup>7</sup> It seems quite natural then to speak of human beings as parts of a society or community. If human beings are parts of a society, the dictum of Aristotle would suggest that the good of the society is greater than that of its parts, seemingly making a society or community more important than its members. Nonetheless, human beings are also persons—wholes unto themselves.<sup>8</sup> As wholes, human persons have a good that is proper to them which is their own, and which cannot be spoken of as inferior to the good of any particular society. Maritain claims that this paradox in speaking of the relation of persons to human society is partly a result of the deficiency of human language:

... the only possible way for us to express the fact that persons live in society is to say that they are parts of, or compose, society.... Let us keep in mind this essential point which is the proper difficulty of and the key to the precisions to follow, namely that, if the person of itself requires ‘to be part of’ society, or ‘to be a member of society,’ this in no wise means that it must be in society in the way in which a part is in a whole and treated in society as a

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<sup>5</sup> *Ibid*, p.49-50.

<sup>6</sup> *Ibid*, pp. 55-56.

<sup>7</sup> Maritain explains the notion of materiality in depth in his third chapter, "Individuality and Personality," pp. 34-38.

<sup>8</sup> Maritain also explains the notion of personality in depth in his third chapter, "Individuality and Personality," pp. 38-42.

part in a whole. On the contrary, the person, as person, requires to be treated as a whole in society.<sup>9</sup>

In the end, Maritain reveals that the life of a person within society involves a series of interdependent relations. First, as material individuals, human persons need the societies in which they live and should work to achieve the goods of their societies. Second, the goods of every human society must flow back upon benefitting the persons who make up each society. Finally, human persons have an intrinsic value and dignity which surpasses every social good. The mark of the true common good is whether or not it benefits the members of the society—not as individuals, for some private goods must be given up for the society—but as persons who possess absolute value and dignity.

### III. Capital Punishment in Natural Law Ethics

With this understanding of the relationship between persons and society in place, we can now examine the two primary philosophical arguments developed in the natural law tradition to defend capital punishment within the political community, as articulated by St. Thomas Aquinas.

The first argument is found in the *Summa Theologica*, II-II, Question 64, which discusses murder. In the second Article of this Question, St. Thomas explains why it is lawful to kill people who pose a danger to society:

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 a 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 ....<sup>10</sup>

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<sup>9</sup> *Ibid*, pp. 57-58.

<sup>10</sup> St. Thomas Aquinas, *Summa Theologica*, II-II, q.64, a.2, *responsio, op. cit.*, p.1467.

In this light, Aquinas justifies the use of lethal force within a political community as an act of *self-defense*—that is, in order to protect society from serious harm.

Ultimately, this first argument rests upon an analogy between society and the human body. The problem here is that this analogy does not hold, even on Aquinas’s own grounds. For, as St. Thomas asserts in the *Summa Contra Gentiles*, Book III, Chapter 112: “Intellectual natures have a closer relationship to a whole than do other natures; indeed, each intellectual substance is, in a way, all things.”<sup>11</sup> Thus, while a finger may be nothing without the whole body, a human being is still something—and a very important something at that—even if separated from society. While a limb and a human being can both be referred to as “parts,” they are not *intrinsically* the same kind of thing. A part of the body does not exist for its own sake, but rather it exists solely for the good of the body taken as a whole. However, Aquinas points out in Chapter 113 of Book III of the *Summa Contra Gentiles* that “a rational creature exists under divine providence as a being governed and provided for in himself.”<sup>12</sup> This point relates back to Maritain’s “paradox of social life.” While human beings can be thought of as parts of society, they remain genuine wholes unto themselves. As such, a rational being does not exist for the sake of society. Rather, the intellectual creature exists simply for its own sake and possesses an intrinsic value that a body part does not have in its own. The “body” analogy does not hold, and so this first argument fails to demonstrate why a community can kill one of its members to safeguard the common good. This is not to say that society cannot legitimately defend itself. But the “body” analogy commonly employed is not strong enough to justify capital punishment given the essential differences between parts of the body and a human person.

The second argument is illustrated in the same Article of Question 64 in the *Summa Theologica*, in Aquinas’s reply to the third objection. In replying to the objection, St. Thomas offers a different defense of capital punishment:

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

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<sup>11</sup> St. Thomas Aquinas, *Summa Contra Gentiles*, Bk. III, ch.112, paragraph 5, translated by the English Dominican Fathers in four books (London: Burns, Oates & Washbourne, Ltd., 1928), p. 117.

<sup>12</sup> *Ibid*, ch.113, paragraph 1, p.120.

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 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 . . .<sup>13</sup>

In a sense, one might think this presents a direct response to the critique just offered in regard to the first argument. If the thrust of the first critique was that a human being should not be killed because of a human's rational nature and intrinsic dignity, then perhaps a human being who has lost their dignity and value can be cut off by society.

Now certainly wrongdoing can be punished, especially if that wrongdoing harms others. But the specific allowance of killing serious wrongdoers because they become like beasts or lower than beasts, although still a popular argument for supporters of capital punishment today, is dubious. Recall that Aquinas holds in the first part of the *Summa Theologica*, Question 76, Article 1, that the form of a human being is the intellectual soul: "Now the proper operation of man as man is to understand; because he thereby surpasses all other animals . . . It follows therefore that the intellectual form is the proper form of man."<sup>14</sup> Since human beings are, by their natures, intellectual, this can never be lost. All humans have a rational nature even when that reason is still undeveloped (in the case of a child), or when it becomes impaired (through trauma to the brain). In short, reason is an intrinsic endowment of human nature.<sup>15</sup> Now when a human being does not employ their reason, such actions are not truly human actions, yet they remain the actions of a human, as Aquinas argued in the *Summa Theologica*, I-II, Question 1, Article 1: "Those actions are properly called human which proceed from a deliberate will. And if any other actions are found in man, they can be called actions *of a man*, but not properly *human* actions . . ."<sup>16</sup> Thus, a human being is still a human being, even if he or she is not acting with reason and will.

It is especially important to note that the reality of human dignity holds regardless of how we may "feel" about the human being in question for what they have done. Opposition to the

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<sup>13</sup> St. Thomas Aquinas, *Summa Theologica*, II-II, q.64, a.2, ad.3, *op. cit.*, p.1467.

<sup>14</sup> *Ibid*, I, q.76, a.1, *responsio*, p.372.

<sup>15</sup> See John Kavanaugh, S.J., *Who Count As Persons?*, Chapter 4, "Endowments of Embodied Persons," for an excellent treatment of endowment theory.

<sup>16</sup> St. Thomas Aquinas, *Summa Theologica*, I-II, q.1, a.1, *responsio*, p.583.

death penalty does not necessarily imply that one is naïve to the viciousness that some members of the human community perpetuate upon others. Nevertheless, a human being can never become like a beast—or worse, lower than a beast—in any true sense. A human being is rational, and possesses intrinsic value and dignity which beasts do not. Recall that in his discussion of *Charity* in the *Summa Theologica*, II-II, Question 25, Article 6, Aquinas explained that this is why we must love sinners: “It is our duty to hate, in the sinner, his being a sinner, and to love in him, his being a man capable of bliss; and this is to love him truly, out of charity, for God’s sake.”<sup>17</sup> In light of these passages from Aquinas, it is clearly impossible for a human being to ever lose dignity—this is, in fact, why human dignity is referred to as *intrinsic*. And so, this second argument is also weak on Aquinas’s own grounds, because a human being can never truly be lower than a beast.

The two arguments used to support the death penalty within the natural law tradition discussed above both falter in light of the broader natural law perspective. In particular, the second argument based upon criminals becoming like beasts is the weaker of the two when considered from the perspective of human dignity as an inherent part of human nature. On the other hand, the first argument—though resting upon the weak body analogy—does have some merit, in that it is drawing upon the obligation of society to protect its members as a form of self-defense. One might wonder if there is a better way to support the argument for capital punishment in light of society’s need for protection. Why not just base the argument directly upon self-defense?

Returning to the *Summa Theologica*, II-II, Question 64, Article 7, Aquinas explains why it is justifiable to kill someone as an act of self-defense under natural law based upon the *Principle of Double Effect*:

Nothing hinders one act from having two effects, only one of which is intended, while the other is beside the intention. Now moral acts take their species according to what is intended, and not according to what is beside the intention, since this is accidental ....

Accordingly the act of self-defense may have two effects, one is the saving of one’s life, the other is the slaying of the aggressor. Therefore this act, since one’s intention is to save

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<sup>17</sup> *Ibid*, II-II, q.25, a.6, *responsio*, p.1290.

one's own life, is not unlawful, seeing that it is natural to everything to keep itself in *being*, as far as possible.<sup>18</sup>

St. Thomas goes on to qualify this justification for killing in self-defense in three important ways. First, there must always be a proportion between the force used to repel a threat in self-defense and the threat itself. As St. Thomas explains in this same Article: "... though proceeding from a good intention, an act may be rendered unlawful, if it be out of proportion to the end. Wherefore if a man, in self-defense, uses more than necessary violence, it will be unlawful: whereas if he repel force with moderation his defense will be lawful ..."<sup>19</sup> This means the use of lethal force can only be justified when lesser levels of force are unable to achieve the same goal. Second, and a point that is often overlooked, is that an individual cannot actually intend to kill an aggressor in an act of self-defense – the killing must only be an unintended effect of the action. That is, one cannot premeditate the killing of another and call it self-defense. However, the case for a political community is different, as Aquinas goes on to explain:

But as it is unlawful to take a man's life, except for the public authority acting for the common good ... it is not lawful for a man to intend killing a man in self-defense, except for such as have public authority, who while intending to kill a man in self-defense, refer this to the public good ....<sup>20</sup>

This becomes the third important qualification that Aquinas makes regarding self-defense, that only a political community can premeditate killing as an act of self-defense. The problem is that in supporting the ability of a political community to intentionally kill, Aquinas refers back to Article 3 of this same Question, which is where he supported the right to practice capital punishment by using the analogy to the body. Since the analogy to the body has been shown to be weak, the practice of allowing society to intentionally kill—or premeditate killing a criminal—remains problematic.

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<sup>18</sup> *Ibid*, q.64, a.7, *responsio*, *op. cit.*, p.1471.

<sup>19</sup> St. Thomas Aquinas, *Summa Theologica*, II-II, Q.64, a.7, *responsio*, *op. cit.*, p.1471.

<sup>20</sup> *Ibid*.



#### **IV. Conclusion**

In the end, while lethal force to defend society can be justified under natural law, it has limits. The force used must be proportionate to the danger. In the case of the death penalty, it is unclear why capital punishment would be required for the protection of society from a criminal already in jail. It is easier to understand why at times law enforcement agents kill fugitives while pursuing them as a legitimate form of self-defense – especially when the fugitive decides to fight to the end and threatens officers or the public with harm in the process. But once a criminal is caught, the premeditated use of force seems disproportionate to the threat the criminal now poses. Again, opposition to the death penalty does not necessarily mean that one is naïve to the realities of crime, or to the inadequacies of the judicial system. Prison reform may well be needed to ensure that violent offenders remain in jail and unable to continue to harm society. Nonetheless, it seems clear that the contemporary situations in which it is justifiable to put a criminal to death to actually defend human society are practically nonexistent. Other acts of self-defense, such as having law enforcement or even maintaining a military, clearly remain. It is at this point that all the other factors related to the actual practice of capital punishment begin to have bearing on the continued use of the death penalty. Given all of the negatives surrounding its use, and the fact that society now has the means to protect itself adequately without recourse to killing criminals, a strong case can be made to end the practice of capital punishment.