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Catholicism and Capital Punishment

How is capital punishment to be evaluated?

*'It is impossible to imagine that States today would fail to employ
a means other than capital punishment to protect
the lives of other people from the unjust aggressor.'*

Pope Francis

The recent outpouring of sorrow at the deaths of two young Australians prompted much discussion of the use of the death penalty. One fortunate aspect of this discussion was that almost nobody seemed to think that an ethical evaluation of the practice could be done simply by determining how popular or unpopular the death penalty is. Right and wrong, even with respect to public policy, can hardly be determined by opinion polls. How, then, are we to evaluate it?

The late, great, American Jesuit, Avery Dulles, approached the question as a theologian. Accepting that sociological and legal questions impinge on any reflection of the ethics of the death penalty, he addressed the question in the terms of revelation 'as it comes to us through Scripture and tradition, interpreted with the guidance of the ecclesiastical magisterium'.

In this issue:

Fifteen years ago, the late Avery Dulles SJ was asked to set out what the Catholic tradition has to offer on capital punishment. **Bernadette Tobin** summarizes his answer.

Frank Brennan SJ explains what is now at stake following the recent decision of the Canadian Supreme Court to remove the ban on assisting someone to commit suicide.

In this short article, I sketch his account of biblical treatment of the death penalty and of the points of doctrine which can be assayed from (his summary of) that source. I then outline Dulles's view that the most important ethical question is not whether capital punishment is a denial of the right to life but whether there could be circumstances under which the death penalty might legitimately be applied today.

The Hebrew Bible

The Mosaic Law specifies thirty-six capital offences calling for execution by stoning, burning, decapitation, or strangulation. Included in the list are idolatry, magic, blasphemy, violation of the Sabbath, murder, adultery, bestiality, pederasty, and incest. The death penalty was considered especially fitting as a punishment for murder since, in his covenant with Noah, God had laid down the principle, "Whoever sheds the blood of man, by man shall his blood be shed, for God made man in His own image" (Genesis 9:6). In many cases, God is portrayed as deservedly punishing culprits with death, as happened to Korah, Dathan, and Abiram (Numbers 16). In other cases individuals such as Daniel and Mordecai are God's agents in bringing a just death upon guilty persons.

The Christian Bible

In the Christian Bible, the right of the State to put criminals to death seems to be taken for granted. Though Jesus himself refrains from using violence and rebukes his disciples for wishing to call down fire from heaven to punish the Samaritans for their lack of hospitality (Luke 9:55), and though later he tells Peter to put his sword in the scabbard rather than resist arrest

(Matthew 26:52), at no point does he deny that the State has authority to exact capital punishment. In his debates with the Pharisees, he cites with approval the apparently harsh commandment, "He who speaks evil of father or mother, let him surely die" (Matthew 15:4; Mark 7:10, referring to Exodus 21:17; cf. Leviticus 20:9). When Pilate calls attention to his authority to crucify him, Jesus points out that Pilate's power comes to him from above - that is to say, from God (John 19:11). Jesus commends the good thief on the cross next to him, who has admitted that he and his fellow thief are receiving the due reward of their deeds (Luke 23:41).

The early Christians

No passage in the Christian bible disapproves of the death penalty. Indeed the early Christians seemed to have nothing against it. They approve of the divine punishment meted out to Ananias and Sapphira when they are rebuked by Peter for their fraudulent action (Acts 5:1-11). The Letter to the Hebrews makes an argument from the fact that "a man who has violated the law of Moses dies without mercy at the testimony of two or three witnesses" (10:28). Paul repeatedly refers to the connection between sin and death. He writes to the Romans, with an apparent reference to the death penalty, that the magistrate who holds authority "does not bear the sword in vain; for he is the servant of God to execute His wrath on the wrongdoer" (Romans 13:4).

The Christian Tradition

The Fathers and Doctors of the Church are virtually unanimous in their support for capital punishment, even though some of them such as St. Ambrose exhort

members of the clergy not to pronounce capital sentences or serve as executioners. To answer the objection that the first commandment forbids killing, St. Augustine writes in *The City of God* :

The same divine law which forbids the killing of a human being allows certain exceptions, as when God authorizes killing by a general law or when He gives an explicit commission to an individual for a limited time. Since the agent of authority is but a sword in the hand, and is not responsible for the killing, it is in no way contrary to the commandment "Thou shalt not kill" to wage war at God's bidding, or for the representatives of the State's authority to put criminals to death, according to law or the rule of rational justice.

In the Middle Ages some taught that ecclesiastical courts should refrain from the death penalty and that civil courts should impose it only for major crimes. But leading canonists and theologians assert the right of civil courts to pronounce the death penalty for very grave offences such as murder and treason. Dulles especially notes that Thomas Aquinas and Duns Scotus invoke the authority of Scripture and patristic tradition, and give arguments from reason. Indeed, in the Middle Ages and early modern times the Holy See authorized the execution of heretics. The Roman Catechism, issued in 1566, three years after the end of the Council of Trent, taught that the power of life and death had been entrusted by God to civil authorities and that the use of this power, far from involving the crime of murder, was an act of paramount obedience to the fifth commandment.

In the 19th century, John Henry Newman, in a letter to a friend, maintained that the magistrate had the right to bear the sword, and that the Church should sanction its use, in the sense that Moses, Joshua, and Samuel used it against abominable crimes. Throughout the first half of the twentieth century the consensus of Catholic theologians in favour of capital punishment in extreme cases remained solid. The Vatican City State from 1929 until 1969 had a penal code that included the death penalty for anyone who might attempt to assassinate the pope. Pope Pius XII, in an allocution to medical experts, declared that it was reserved to the public power to deprive the condemned of the benefit of life in expiation of their crimes.

Some settled points of doctrine

Dulles summarizes the doctrine which can be derived from this tradition of thought as follows: Crime deserves punishment in this life and not only in the next. In addition, the State has authority to administer appropriate punishment to those judged guilty of crimes and that this punishment may, in serious cases, include the sentence of death.

Yet from at least the 20th century there has been a 'rising chorus' of voices amongst Catholics which raise objections to capital punishment. Dulles quotes an Italian Franciscan, Gino Concetti, writing in *L'Osservatore Romano* in 1977:

In light of the word of God, and thus of faith, life - all human life - is sacred and untouchable. No matter how heinous the crimes . . . [the criminal] does not lose his fundamental right to life, for it is primordial, inviolable, and inalienable, and thus comes under

the power of no one whatsoever. If this right and its attributes are so absolute, it is because of the image which, at creation, God impressed on human nature itself. No force, no violence, no passion can erase or destroy it. By virtue of this divine image, man is a person endowed with dignity and rights.

This ‘radical reversal of the Catholic tradition’ is explained by its proponents in the following way. The Church in past times failed to perceive the true significance of the image of God in man which implies that each individual person is sacred and inviolable. Both Jews and Christians of old failed to think through the consequences of this revealed doctrine, caught up as they were in a barbaric culture of violence and in an absolutist theory of political power, both handed down from the ancient world. Today we perceive the dignity and inalienable rights of the human person better than they did. We can move beyond the outmoded doctrines that the State has a divinely delegated power to kill and that criminals forfeit their fundamental human rights. And so, the teaching on capital punishment must today undergo a dramatic development corresponding to these new insights.

But, according to Dulles, this is too quick. Arguments from the progress of ethical consciousness have been used to promote a number of alleged human rights that the Catholic Church consistently rejects in the name of Scripture and tradition. The magisterium appeals to these authorities as grounds for repudiating divorce, abortion, homosexual relations, and the ordination of women to the priesthood. If the Church feels herself bound by Scripture and

tradition in these other areas, it seems inconsistent for Catholics to proclaim a “moral revolution” on the issue of capital punishment.

In fact, the Catholic magisterium does not, and never has, advocated unqualified abolition of the death penalty. Catholic teaching authorities justify the right of the State to inflict capital punishment on the ground that the State does not act on its own authority but as the agent of God, who is supreme lord of life and death. In teaching this view, they can properly appeal to Scripture. Paul holds that the ruler is God’s minister in executing God’s wrath against the evildoer (Romans 13:4). Peter admonishes Christians to be subject to emperors and governors, who have been sent by God to punish those who do wrong (1 Peter 2:13). Jesus, as already noted, apparently recognized that Pilate’s authority over his life came from God (John 19:11). Pius XII, in a further clarification of the standard argument, holds that when the State, acting by its ministerial power, uses the death penalty, it does not exercise dominion over human life but only recognizes that the criminal, by a kind of moral suicide, has deprived himself of the right to life.

In light of all this Dulles concludes that the death penalty is not in itself a violation of the right to life. The real issue for Catholics, he argues, is to determine the circumstances under which that penalty may be applied. On this question his view is that it is appropriate only when it is both necessary to achieve the purposes of punishment and does not have disproportionate evil effects’. To reiterate: only then. What, then, are the purposes of punishment and its potential evil side effects?

The purposes of criminal punishment

In the Catholic tradition, there is agreement about the purposes of criminal punishment. Punishment serves four purposes: rehabilitation, defence against the criminal, deterrence, and retribution. Is the death penalty a necessary means to attain any of them today?

Rehabilitation

Capital punishment does not reintegrate the criminal into society; rather, it cuts off any possible rehabilitation. However, says Dulles, the sentence of death can and sometimes does move the condemned person to repentance and conversion. There is a large body of Christian literature on the value of prayers and pastoral ministry for convicts on death row or on the scaffold. In cases where the criminal seems incapable of being reintegrated into human society, the death penalty may be a way of achieving the criminal's reconciliation with God.

Defence against the criminal

Capital punishment is obviously an effective way of preventing the wrongdoer from committing future crimes and protecting society from him. Whether execution is necessary is another question. One could no doubt imagine an extreme case in which the very fact that a criminal is alive constitutes a threat that he might be released or escape and do further harm. But, as John Paul II remarks in *Evangelium Vitae*, modern improvements in the penal system have made it extremely rare for execution to be the only effective means of defending society against the criminal.

Deterrence

Executions, especially where they are painful, humiliating and public, may create a sense of horror that would prevent others from being tempted to commit similar crimes. But the Fathers of the Church censured spectacles of violence such as those conducted at the Roman Colosseum. Vatican II's *Pastoral Constitution on the Church in the Modern World* explicitly disapproved of mutilation and torture as offensive to human dignity. In our day death is usually administered in private by relatively painless means, such as injections of drugs, and to that extent, thinks Dulles, it may be less effective as a deterrent. Indeed, sociological evidence on the deterrent effect of the death penalty as currently practiced is ambiguous, conflicting, and far from probative.

Retribution

In principle, guilt calls for punishment. The graver the offence, the more severe the punishment ought to be. In the Scripture death is regarded as the appropriate punishment for serious transgressions. Thomas Aquinas held that sin calls for the deprivation of some good, such as, in serious cases, the good of temporal or even eternal life. By consenting to the punishment of death, the wrongdoer can be placed in a position to expiate his evil deeds and escape punishment in the next life. Retribution by the State has its limits because the State, unlike God, enjoys neither omniscience nor omnipotence. According to Christian faith, God "will render to every man according to his works" at the final judgment (Romans 2:6; cf. Matthew 16:27). Retribution by the State can only be a symbolic anticipation of God's perfect justice.

It is important to note, however, that this ‘symbolic anticipation of God’s perfect justice’ can have meaning only against the background of a belief in a transcendent order of justice, which the State has an obligation to protect. Such a belief may have been widely held in the past. It is no longer widely held. Today the death penalty expresses not the divine judgment on objective evil but rather the collective anger of the group. The retributive goal of punishment is thus [mis]construed as a self-assertive act of vengeance.

Dulles concludes that, though the death penalty may have some limited value, its necessity is open to doubt. It does not rehabilitate the criminal but may be an occasion for bringing about salutary repentance. It is an effective but rarely, if ever, a necessary means of defending society against the criminal. Whether it serves to deter others from similar crimes is a disputed question, difficult to settle. Its retributive value is impaired by lack of clarity about the role of the State.

Four serious objections

A good philosopher (and a good theologian!) needs to consider not only the arguments in favour of a practice but also the arguments against it. So Dulles goes on to consider the claim that, besides being unnecessary and often futile, capital punishment can also be seriously harmful. He outlines the four serious objections which are commonly mentioned in the literature.

Possibility of innocence

There is, first of all, a possibility that the convict may be innocent. John Stuart Mill, in his well-known defence of capital punishment, considers this to be the most

serious objection. He cautions that the death penalty should not be imposed except in cases where the accused is tried by a trustworthy court and found guilty beyond all shadow of doubt. It is common knowledge that even when trials are conducted, biased or kangaroo courts can often render unjust convictions. Even in the United States, where serious efforts are made to achieve just verdicts, errors occur, only some of which are corrected by appellate courts. Poorly educated and penniless defendants often lack the means to procure competent legal counsel; witnesses can be suborned or can make honest mistakes about the facts of the case or the identities of persons; evidence can be fabricated or suppressed; and juries can be prejudiced or incompetent. Some “death row” convicts have been exonerated by newly available DNA evidence. Since it is altogether likely that some innocent persons have been executed, this first objection is a serious one.

Fosters revenge

Another objection observes that the death penalty often has the effect of whetting an inordinate appetite for revenge rather than satisfying an authentic zeal for justice. By giving in to a perverse spirit of vindictiveness or a morbid attraction to the gruesome, courts contribute to the degradation of the culture, replicating the worst features of the Roman Empire in its period of decline.

Cheapens the value of life

Furthermore, critics say, capital punishment cheapens the value of life. By giving the impression that human beings sometimes have the right to kill, it fosters a casual attitude toward evils such as

abortion, suicide, and euthanasia. This is a major theme in writers who invoke a “consistent ethic of life”. But although this argument may have some validity, Dulles thinks that its force should not be exaggerated. Some who are ‘pro-life’ on issues such as abortion support the death penalty: they claim that, because the innocent and the guilty do not have the same rights, there is no inconsistency.

Incompatible with Jesus’ teaching on forgiveness

Finally, some hold that the death penalty is incompatible with the teaching of Jesus on forgiveness. Dulles thinks this argument is complex at best, since the quoted sayings of Jesus have reference to forgiveness on the part of individual persons who have suffered injury. It is indeed praiseworthy for victims of crime to forgive their debtors, but such personal pardon does not absolve offenders from their obligations in justice. John Paul II points out that “reparation for evil and scandal, compensation for injury, and satisfaction for insult are conditions for forgiveness”. The relationship of the State to the criminal is not the same as that of a victim to an assailant. Governors and judges are responsible for maintaining a just public order. Their primary obligation is toward justice, but under certain conditions they may exercise clemency. In a careful discussion of this matter Pius XII concluded that the State ought not to issue pardons except when it is morally certain that the goals of punishment have been achieved. Under these conditions, requirements of public policy may warrant a partial or full remission of punishment. If clemency were granted to all convicts, the nation’s prisons would be instantly

emptied, but society would not be well served.

In practice, then, a delicate balance between justice and mercy must be maintained. The State’s primary responsibility is for justice, although it may at times temper justice with mercy. The Church represents the mercy of God. Showing forth the divine forgiveness that comes from Jesus Christ, the Church is deliberately indulgent toward offenders, but it too must on occasion impose penalties. The Code of Canon Law contains an entire book devoted to crime and punishment. It would be clearly inappropriate for the Church, as a spiritual society, to execute criminals, but the State is a different type of society. It cannot be expected to act as a Church. In a predominantly Christian society, however, the State should be encouraged to lean toward mercy provided that it does not thereby violate the demands of justice.

Dulles thinks that these four objections to capital punishment are of different weight. The first is relatively strong; the second and third have some probable force. The fourth objection is relatively weak. But taken together, Dulles concludes, the four ‘may suffice to tip the scale against the use of the death penalty’. And so, in 2001, Cardinal Dulles concluded that the doctrine of the Church remains what it has been: that the State, in principle, has the right to impose the death penalty on persons convicted of very serious crimes. But the classical tradition held that the State should not exercise this right when the evil effects outweigh the good effects. Thus the principle still leaves open the question whether and when the death penalty ought to be applied. Writing

fifteen years ago, and as an American, Cardinal Dulles pointed out that the Pope (John Paul II) and the bishops (the US bishops) had concluded that, in contemporary society, at least in countries like their own, the death penalty ought not to be invoked, because it does more harm than good. Dulles finishes thus: ‘I personally support this position.’

Conclusion

In October 2014 Pope Francis said that ‘it is impossible to imagine that States today could fail to employ a means other than capital punishment to protect the lives of other people from the unjust aggressor.’¹

The Australian Catholic Bishops recently repeated their view that the death penalty is an affront to the sanctity of human life. They said: ‘*Each and every life – even the lives of those who have done great evil – must be respected. Capital punishment undermines a society’s respect for life and contributes to a culture of vengeance and death. It is cruel and unnecessary, since all societies have other means of protecting themselves from violence and restoring justice. And it denies those who have committed crimes the chance to repent and reform.*’²

¹http://w2.vatican.va/content/francesco/en/speeches/2014/october/documents/papa-francesco_20141023_associazione-internazionale-diritto-penale.html, accessed 18.5.15

²<http://www.socialjustice.catholic.org.au/social-teaching/issues/42-briefings/1502briefing/704-from-the-secretariat-february-2015>, accessed 18.5.2015

Nonetheless Dulles’ careful ethical evaluation of capital punishment – undertaken almost fifteen years ago, in the US context in which states differ with each other on this matter - retains its instructive value.³



³Avery Dulles, SJ. Catholicism and Capital Punishment, *First Things*, April, 2001. Avery Cardinal Dulles, S.J. held the Laurence J. McGinley Chair in Religion and Society at Fordham University. His essay in *First Things* was adapted from a McGinley Lecture delivered in New York City.

<http://www.firstthings.com/article/2001/04/catholicism-amp-capital-punishment>, accessed 19.2.15

Canada Opens the Door to Physician Assisted Suicide – and perhaps even more

Frank Brennan SJ

In February 2015, the Canadian Supreme Court unanimously ruled that the universal ban on assisting someone to commit suicide was unconstitutional.¹ The Court reversed its previous decision upholding the ban 21 years ago, noting there had been changes to the law and end of life care in other places, as well as to the Court's way of interpreting the Canadian Charter of Rights and Freedoms. The court has suspended its judgment for a year giving the Parliament time to consider how it will respond.

The court considered the claims of two parties. In 2009, Gloria Taylor was diagnosed with ALS (amyotrophic lateral sclerosis). She knew that she would first lose the ability to use her hands and feet, and that she would progressively lose the capacity to chew, swallow, speak and breathe. She did 'not want to die slowly, piece by piece' or 'wracked with pain'. She wanted to have the option of seeking medical assistance to self-administer a painless, deadly potion at a time of her choosing. She explained:

There will come a point when I will know that enough is enough. I cannot say precisely when that time will be. It is not a question of "when I can't walk" or "when I can't talk." There is no pre-set trigger moment. I just know that, globally, there will be some

point in time when I will be able to say – "this is it, this is the point where life is just not worthwhile." When that time comes, I want to be able to call my family together, tell them of my decision, say a dignified good-bye and obtain final closure - for me and for them.

Having commenced the long running litigation, Gloria Taylor passed away in 2012.

In 2008 Kay Carter had been diagnosed with spinal stenosis, a condition that results in the progressive compression of the spinal cord. She told her family that she did not want to end her life 'like an ironing board', having to lie flat in bed all day and all night. In 2010, she convinced her daughter Lee and Lee's husband Hollis to accompany her to Switzerland so she could obtain assistance with dying from *Dignitas*. Lee and Hollis joined the litigation seeking court assurance that they could not be prosecuted for having assisted Kay with her suicide.

The Canadian Charter of Rights and Freedom provides: 'Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice'. The successful

argument put by those seeking approval for assisted suicide ran as follows.

Gloria or Kay is entitled to take her own life at a time of her choosing. If she is denied the capacity to seek assistance with her suicide, she will need to end her life sooner than she otherwise would have chosen because she will need to do it when she is still physically able to arrange her death. If she were permitted to seek assistance she could live longer. The criminal sanction banning assistance with suicide thereby deprives her of some span of life because she needs to choose a premature death.

The court decided that ‘the right to life is engaged where the law or state action imposes death or an increased risk of death on a person, either directly or indirectly’, regardless of whether death is being chosen by the person claiming the right to life. Considering the right to liberty and security in the context of the personal decision when to commit suicide, the court observed, ‘This is a decision that is rooted in their control over their bodily integrity; it represents their deeply personal response to serious pain and suffering. By denying them the opportunity to make that choice, the prohibition impinges on their liberty and security of the person.’ So the court ruled that insofar as the criminal law prohibited ‘physician-assisted dying for competent adults who seek such assistance as a result of a grievous and irremediable medical condition that causes enduring and intolerable suffering’, it ‘infringes the rights to liberty and security of the person’.

Under the Canadian Charter, once an infringement of rights is found, it is then

necessary to determine whether that infringement is in accordance with ‘the principles of fundamental justice’. 21 years ago, the Court had decided that the state’s need and desire to protect vulnerable persons from being induced to commit suicide at a time of weakness provided justification for this restriction on liberty and security of the person.

At the trial, the state conceded ‘that not every person who wishes to commit suicide is vulnerable, and that there may be people with disabilities who have a considered, rational and persistent wish to end their own lives’. The trial judge observed that Gloria Taylor was one such person: ‘competent, fully-informed, and free from coercion or duress’. On appeal the Supreme Court decided, ‘The blanket prohibition sweeps conduct into its ambit that is unrelated to the law’s objective’.

Having decided that the absolute ban on assisted suicide was a breach of a Charter right, the court needed to consider whether the breach was one which could be ‘demonstrably justified in a free and democratic society’. The court usually grants Parliament some deference in making this assessment. But in this case the court observed that the blanket ban on assisted suicide could hardly be viewed as a ‘complex regulatory response’ to a social ill which would usually garner a high degree of deference.

The court needed to consider whether the absolute ban was the least drastic means of achieving the legislative objective of protecting the vulnerable. The Supreme Court was adamant that a less drastic means was available. The court accepted the trial judge’s conclusion that ‘it is

possible for physicians, with due care and attention to the seriousness of the decision involved, to adequately assess decisional capacity' and that 'the risks associated with physician-assisted death can be limited through a carefully designed and monitored system of safeguards'.

It is disheartening to note the court's unquestioning acceptance of the trial judge's observation that the 'preponderance of the evidence from ethicists is that there is no ethical distinction between physician-assisted death and other end-of-life practices whose outcome is highly likely to be death'. Those other practices are the withholding or withdrawal of lifesaving or life-sustaining medical treatment. The time honoured distinction between, on the one hand, an act which is intended to bring about death and, on the other, the cessation of a treatment now judged to be futile or overly burdensome in the foreknowledge that ceasing this treatment will likely hasten death has been erased by judicial fiat and the straw vote of ethicists chosen by the parties to a legal dispute. There is now said to be no ethical distinction between turning off the ventilator because it has ceased to be therapeutic and administering a lethal injection. The court has moved the debate very rapidly into choppy waters.

The issue is now in the hands of Parliament. If the Canadian Parliament were just to sit on its hands, there would be no ban or regulation whatever of assisted suicide in place in a year's time. Presumably the Parliament will see a need to legislate a complex regulatory response, including the ongoing criminalisation of assistance with suicide other than that

considered by the court. The court confined its attention to the case of 'physician-assisted death for a competent adult person who (1) clearly consents to the termination of life; and (2) has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition'. The court stated, 'We make no pronouncement on other situations where physician-assisted dying may be sought.' Who then should decide competence, who should assess how grievous and irremediable a medical condition is, and who should decide whether the suffering is intolerable to the individual, especially if the individual be suffering some form of dementia? What safeguards need to be put in place?

In the UK, the House of Lords has been considering these issues against the backdrop of a decision of the UK Supreme Court delivered in June 2014. Lord Falconer's *Assisted Dying Bill* initially proposed that these issues be resolved just by the patient and their physician. The Bill has now been amended proposing that a court order always be obtained confirming that the adult patient has 'a voluntary, clear, settled and informed wish to end his or her own life' and the capacity to make the decision. Two doctors would need to certify that the patient is terminally ill (being reasonably expected to die within 6 months) having made the decision voluntarily and on an informed basis without coercion or duress. Terminal illness is defined in the Bill as 'an inevitably progressive condition which cannot be reversed by treatment'. These are the sorts of issues which will now need

to be considered by parliaments concerned to protect the vulnerable while providing for those like Gloria Taylor and Kay Carter.

No doubt the US Supreme Court will be called upon to reconsider the issue which was last before that court in 1997. The US court is unlikely to accept a case for hearing until it has first resolved the same sex marriage question. Instead of talking about 'principles of fundamental justice' and what can be 'demonstrably justified in a free and democratic society', the US

judges will discuss 'due process' and 'equal protection'. These are the various constitutional devices for determining the judicial morality of vexed social questions. Societies like Canada, the UK and the US are now at the frontier determining whether the administration of a fatal injection is the same as switching off a ventilator and whether state assisted and state authorised suicide should be restricted only to some groups or made available to all self-determining citizens whether or not they are suffering a painful terminal illness.



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