



The Holy See

ADDRESS OF POPE FRANCIS TO THE DELEGATES OF THE INTERNATIONAL ASSOCIATION OF PENAL LAW

*Hall of Popes
Thursday, 23 October 2014*

Distinguished Ladies and Gentlemen,

I warmly greet all of you and I would like to express my personal gratitude for your service to society and for your valuable contribution to the development of a legal process that respects the dignity and rights of the human person, without distinction.

I would like to share a few ideas with you on certain issues which, although debatable in part — in part! — touch directly upon the dignity of the human person and therefore concern the Church, in her mission of evangelization, of human advancement, of service to justice and to peace. I shall do so in summary form and under headings, in an expository and concise manner.

Introduction

First of all I should like to make two premises, sociological in nature, regarding incitement to revenge and penal populism.

a) Incitement to revenge

In mythology as in primitive societies, the crowd discovers the evil powers of its sacrificial victims, who are accused of the misfortunes that befall the community. This dynamic is not lacking in modern societies either. Reality shows that the existence of the legal and political instruments necessary to address and resolve conflicts is not a sufficient guarantee to prevent some individuals from being blamed for everyone's problems.

Civic life, structured around an organized community, needs rules of coexistence, the wilful

violation of which demands appropriate redress. However, we are living in times in which, as much as in some political sectors as by certain media, public and private violence and revenge are incited, not only against those responsible for committing crimes, but also against those suspected, whether proven or not, of breaking the law.

b) Penal populism

In this context, a widespread conviction has taken root in recent decades that public punishment can resolve the most disparate social problems, as if completely different diseases could be treated with the same medicine. This is not so much about trust in some social function traditionally attributed to public punishment, as about the belief that it is possible that such punishment can obtain those benefits that would demand the application of a different type of social and economic policy as well as social inclusion.

Scapegoats are not only sought to pay, with their freedom and with their life, for all social ills such as was typical in primitive societies, but over and beyond this, there is at times a tendency to deliberately fabricate enemies: stereotyped figures who represent all the characteristics that society perceives or interprets as threatening. The mechanisms that form these images are the same that allowed the spread of racist ideas in their time.

I. Criminal justice out of control and the mission of jurists

The guiding principle of *cautela in poenam*

As things stand, the criminal justice system oversteps its proper sanctioned function and places itself on the ground of the freedoms and rights of the people, especially of the most vulnerable, in the name of prevention whose effectiveness it has not yet been possible to ascertain, not even for the most severe punishments, such as the death penalty. There is a risk of failing to preserve even the proportionality of punishment, which historically reflects the scale of values protected by the State.

There has been an abatement of the *ultima ratio* concept of criminal law as the last resort to punishment, limited to the most serious cases against the individual and collective interests most worthy of protection. The debate over replacing prison with alternative punitive sanctions has also abated.

In this context, the mission of jurists cannot be other than that of limiting and containing these tendencies. It is a difficult task, in times when many judges and employees in the criminal justice system must perform their work under the pressure of the mass media, of certain unscrupulous politicians and of the vengeful trend which permeates society. Those charged with this great responsibility are called to fulfil their duty, since not to do so would endanger human lives, which

need to be treated with greater commitment than what is sometimes done in carrying out one's duties.

II. Regarding the primacy of life and the dignity of the human person

Primatus principii pro homine

a) Regarding the death penalty

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

St John Paul II condemned the death penalty (cf. Encyclical Letter *Evangelium Vitae*, n. 56), as does the *Catechism of the Catholic Church* (n. 2267) as well.

It can be established, however, that States take life not only through the death penalty and through war, but also when, in order to justify their crimes, public officials take refuge in the shadow of State prerogatives. So-called extra-judicial or extra-legal executions are homicides deliberately committed by certain States and by their agents, often passed off as clashes with criminals or presented as the unintended consequences of the reasonable, necessary and proportionate use of force in applying the law. In this way, although among the 60 Countries that sanction the death penalty, 35 have not applied it in the last 10 years, the death penalty is applied illegally and in varying degrees throughout the planet.

The same extra-judicial executions are performed in a systematic way not only by States in the international community, but also by entities not recognized as such, and they are genuine crimes.

There are many well known arguments against the death penalty. The Church has duly highlighted several, such as the possibility of judicial error and the use made of such punishment by totalitarian and dictatorial regimes who use it as a means of suppressing political dissidence or of persecuting religious and cultural minorities, all victims who, in their respective legislation are termed "delinquents". All Christians and men of good will are thus called today to fight not only for the abolition of the death penalty, whether legal or illegal, and in all its forms, but also in order to improve prison conditions, with respect for the human dignity of the people deprived of their freedom. And I link this to life imprisonment. Recently the life sentence was taken out of the Vatican's Criminal Code. A life sentence is just a death penalty in disguise.

b) Regarding conditions of detention, un-sentenced prisoners and those sentenced without trial

These are not tall stories: you know it well — pretrial detention — when an early sentence is procured in an abusive manner, without conviction, or as a measure applied in case of a suspicion

more or less based on a crime committed — constitutes another contemporaneous form of unlawful and hidden punishment, beyond a veneer of legality.

This situation is particularly serious in certain countries and regions of the world, where the number of un-sentenced detainees surpasses 50 percent of the total. This phenomenon contributes to an even greater deterioration of the conditions of detention, a situation which the building of new prisons can never manage to resolve, since the capacity of every new prison is already exhausted before being opened. In addition it causes the misuse of police stations and military bases as places of detention. The issue of un-sentenced prisoners should be addressed with due caution since it runs the risk of creating another problem as serious as, if not worse than, the first: that of untried prisoners, convicted without applying the rules.

The deplorable conditions of detention which are observed in various parts of the planet, are often genuinely inhuman and degrading deficiencies, often the result of the penal system, at other times due to the lack of infrastructure and of planning, while in more than a few cases they represent the arbitrary and unscrupulous exercise of power over people deprived of freedom.

c) Regarding torture and other measures, and cruel, inhuman and degrading punishments

The adjective “cruel”; under these headings that I have mentioned, there is always that root: the human capacity for cruelty. This is a passion, a real vice! One form of torture is the one sometimes applied through confinement in high security prisons. With the pretext of offering greater security to society or special treatment for certain categories of prisoners, its main characteristic is none other than external isolation. As shown by studies carried out by various human rights organizations, the lack of sensory stimuli, the total impossibility of communication and the lack of contact with other human beings induce mental and physical suffering such as paranoia, anxiety, depression, weight loss, and significantly increase the suicidal tendency.

This phenomenon, a characteristic of high security prisons, also occurs in other types of penitentiaries, along with other forms of physical and mental torture, the practice of which has spread. Today torture is not inflicted only as a means of obtaining a specific objective, such as a confession or information — practices which are characteristic of national security doctrine — but is a genuine surplus of pain added to the actual suffering of imprisonment. In this way, torture occurs not only in clandestine detention centres or in modern day concentration camps, but also in prisons, institutes for juveniles, psychiatric hospitals, police stations and other centres and institutions of detention and punishment.

The very theory of criminal justice has great responsibility in this sphere, by the fact of having permitted, in certain cases, the legitimization of torture on certain grounds, opening the way to further and more extensive abuses.

Many States are also responsible for having committed or tolerated kidnapping within their territories, including that of citizens of their respective countries, or of having authorized the use of their air space for illegal transportation toward detention centres where torture takes place.

These abuses can only be stopped with the firm commitment of the international community to recognize the primacy of the *pro homine* principle, meaning the dignity of the human person above every thing else.

d) Regarding the application of criminal sanctions on children and the elderly and with regard to other particularly vulnerable people

States must abstain from the criminal beating of children, who have not fully developed to maturity and for this reason cannot be held responsible. They must instead benefit from all the privileges that the State is capable of offering, regarding policies of inclusion as much as practices directed at developing in them respect for life and for the rights of others.

The elderly, for their part, are those who, starting from their mistakes, can teach the rest of society. One does not learn solely from the virtues of saints, but also from the shortcomings and mistakes of sinners and, among them, from those who, for whatever reason, have fallen and have committed crimes. Moreover, humanitarian reasons dictate particular treatment for adults now advanced in age, as punishment must be excluded or limited for those who suffer from serious or terminal illness, for pregnant women, for disabled people, for mothers or fathers who are the only person responsible for minors or for disabled people.

III. Considerations regarding certain forms of criminality that gravely harm human dignity and the common good

Certain forms of criminality, perpetrated by private citizens, gravely harm human dignity and the common good. Many of these forms of criminality could never be committed without the complicity, active or passive, of public authorities.

a) Regarding the crime of human trafficking

Enslaving people, human trafficking and war crimes are recognized as crimes against humanity, both by international law and by many national laws. It is a crime against humanity. And since it is not possible to commit so complex a crime as human trafficking without the complicity, by action or omission, of States, it is evident that, when efforts to prevent and combat this phenomenon are insufficient, we are again facing a crime against humanity. Moreover, should it happen that person who is appointed to protect people and guarantee their freedom, instead becomes an accomplice of those who trade in human beings, then, in such cases, the States are responsible before their citizens and before the International Community.

Figures state that a billion people are trapped in absolute poverty. One-and-a-half billion people do not have access to sanitation services, to potable water, to electricity, to elementary education or to the healthcare system, and must endure economic hardship inconsistent with a dignified life (2014 *Human Development Report*, UNPD). Although the total number of people in this situation has decreased in recent years, their vulnerability has increased, due to the increased difficulties they have to face in order to emerge from that situation. This is the result of the ever growing number of people living in war stricken countries. In 2012 alone, 45 million people were forced to flee due to situations of violence or persecution; of these, 15 million are refugees, the highest figure in 18 years. Seventy percent of these people are women. Additionally, it is estimated that, worldwide, seven out of ten who die of starvation are women and children (*United Nations Fund for Women*, UNIFEM).

b) Regarding the crime of corruption

The scandalous concentration of global wealth is made possible by the connivance of public leaders with the powers that be. Corruption is in and of itself a death process: when a life is ended, there is corruption.

There are few things more difficult than breaching a corrupt heart: "So is he who lays up treasure for himself, and is not rich toward God" (Lk 12:21). When a corrupt person's private situation becomes complicated, he knows all the loopholes to escape, as did the dishonest steward of the Gospel (cf. Lk 16:1-8).

A corrupt person passes through life with shortcuts of opportunism, with an air of one who says: "It wasn't me", managing to internalize his 'honest man' mask. It is a process of internalization. The corrupt person cannot accept criticism; he discredits those who criticize; he seeks to diminish any moral authority that may call him into question; he does not value others and attacks with insults whomsoever may think in a different way. Should opportunity permit, he persecutes anyone who contradicts him.

Corruption is expressed in an atmosphere of triumphalism because the corrupt person considers himself a winner. He struts about in that environment in order to belittle others. The corrupt person knows neither brotherhood nor friendship, but complicity and enmity. The corrupt one does not perceive his corruption. It is somewhat like what happens with bad breath: the person who has it is seldom aware of it; it is the others who notice it and have to tell him about it. For this reason it is unlikely that the corrupt person will be able to recognize his state and change through inner remorse.

Corruption is a greater ill than sin. More than forgiveness, this ill must be treated. Corruption has become natural, to the point of becoming a personal and social statement tied to customs, common practice in commercial and financial transactions, in public contracting, in every

negotiation that involves agents of the State. It is the victory of appearances over reality and of brazenness over honourable discretion.

The Lord, however, does not tire of knocking at the doors of the corrupt. Corruption is no match for hope.

What can criminal law do against corruption? There are now many conventions and international treaties on the subject and a proliferation of offenses defined and directed at protecting not so much the citizenry, who are definitively the ultimate victims — especially the most vulnerable — as to protect the interests of those operating the economic and financial markets.

Criminal punishment is selective. It is like a net that catches only the little fish, while it leaves the big fish free in the ocean. The forms of corruption that most need to be addressed are those which cause severe social harm — such as, for example, serious fraud against the public administration or dishonest administrative practices — shown by any type of obstruction of justice intended to gain impunity for one's own misdeeds or for those of third parties.

Conclusion

In the application of punishment, caution must be the underlying principle of criminal law systems, and the full operative force of the *pro homine* principle must guarantee that States are not allowed, juridically or in fact, to subordinate respect for the dignity of the human person to any other purpose, even should it serve some sort of social utility. Respect for human dignity must serve not only to limit arbitrariness and the excesses of the agents of the State, but act as a guiding criterion for the prosecution and punishment of those actions which represent the most serious attacks against the dignity and integrity of the human person.

Dear friends, I thank you again for this meeting, and I assure you that I will continue to be close to you in your demanding work in serving man in the field of justice. There is no doubt that, for those among you who are called to live the Christian vocation of your Baptism, this is a privileged and dynamic field of world evangelization. For all, even those of you who are not Christian, there is a need in every case for the assistance of God, who is the source of all reason and justice. Hence, I invoke, upon each one of you, through the intercession of the Virgin Mother, the light and the power of the Holy Spirit. I bless you from my heart and I ask you to please pray for me. Thank you.