

Antonin Scalia's Death and the Death Penalty: A Teachable Moment

Over the last few days we have been subjected to a non-stop laudatory commentary via U.S. corporate media on Antonin Scalia, who died on February 13, 2016. So be it. People can say what they want, or what they are paid to say as they wish. For my part I only wish Antonin Scalia, a fellow Christian and human being, the best in his future existence.

The glitterati of Washington's political and media society fought like the devil to get a ticket into the Immaculate Conception Basilica for his Catholic funeral liturgy. The greats of the corporate world and Wall Street were well represented in the great Church for the event. Prelates and military men of status and power were very much part of the scene. The Scalia funeral liturgy was the social-political event of the year in D.C. so far. Of course, the one person who was not in the pews or in the sanctuary was Antonin Scalia. He was with the community of the dead. He was face to face with Ramon Hernandez, Willie Brown, Karla Faye Tucker, Warren McCleskey, Lynda Block, Billy Ray Williams, Esequel Banda, Kimberly McCarthy, Willie Darden, Lisa Coleman, Walter Williams, Lionel Herrera, Suzanne Basso, Amos King, Terry Lyn Short and newly arrived on February 17, 2016, Travis Hittson, as well as 1266 others in whose homicide he participated.

His accomplishments in one of the kingdoms of this world, the United States, were remembered and much ballyhooed at his funeral, but are of no interest to me. What concerns me is the spiritual and temporal frivolousness of his witness, indeed his false witness, to the Jesus of the Gospels as a prime advocate, practitioner and executioner of the death penalty, wearing his Christianity on his sleeve for everyone to see, even as he sent person after person to his or her death. Over his thirty years on the Supreme Court—the court of last resort and hope for a person pleading to be saved from the application of the merciless eye-for-eye, tooth-for-tooth, death-for-death *lex talionis* of Judaism (LEV 24:19-21; EX 21:23; DT 19:20-21)—1,282 human beings were killed under a death penalty law. In almost all cases he was positioned to stop the homicide, but he publicly and vigorously or silently refused. What concerns me is the Church of Jesus Christ, which by definition is supposed to be “an extension of Christ in time and space,” validating, endorsing and indeed glorifying his homicidal activity as consistent with the person and/or teaching of the Jesus of the Gospels, and thereby misleading other Christians and non-Christians about the truth that Jesus taught in the Gospels as the Way and Will of God for His chosen disciples.

Machinery of Death

Here, in a University of Chicago speech, is how Antonin Scalia justified his participation in the killing of helplessly bound men and women prisoners, who by some application of some state method of determining legal guilt, were designated guilty of unjustly killing a human being:

“But while my views on the morality of the death penalty have nothing to do with how I vote as a judge, they have a lot to do with whether I can or should be a judge at all. To put the point in the blunt terms employed by Justice Harold Blackmun towards the end of his career on the bench, when he announced that he would henceforth vote to overturn all death sentences: *‘When I sit on a Court that reviews and affirms capital convictions, I am part of the machinery of death.’* My vote, when joined with at least four others, is, in most cases, the last step that permits an execution to proceed. I could not take part in that process if I believed what was being done to be immoral.”

“I could not take part in that process if I believed what was being done to be immoral.” Therein lays the spiritual and temporal, lethal and frivolous witness of his Christian witness to the Way taught by Jesus in the Gospels for His chosen disciple. It is true that the Mosaic Law along with numerous other codes of law state approximately what Deuteronomy 19:20-21 declares:

“The rest will hear and be afraid, and will never again do such an evil thing among you. Thus you shall not show pity: life for life, eye for eye, tooth for tooth, hand for hand, foot for foot.”

It is equally true, however, that Jesus declares for those who believe He is Lord, God, Messiah, the Word of God Incarnate and Savior, “*You have heard it said of old, ‘an eye for an eye and a tooth for a tooth’ but I say to you...*” (Mt 5:38-42), which is an exposition rejecting even proportionate retaliation. So how, pray tell, does a Christian acquire the requisite degree of moral certainty to become “part of the machinery of death” that executes people under the auspices of one code of law or another? Can a Christian judge in a country whose code of law beheads a woman legally designated an adulteress vote for her execution, become part of the “machinery of death” that legally cuts her head off?

Antonin Scalia, a Baptized Christian, justifies his participation in the “machinery of death” that burns people to death in an electric chair this way:

“The Constitution that I interpret and apply is not living but dead—or, as I prefer to put it, enduring. It means today not what current society (much less the Court) thinks it ought to mean, but what it meant when it was adopted. For me, therefore, the constitutionality of the death penalty is not a difficult, soul-wrenching question. It was clearly permitted when the Eighth Amendment was adopted (not merely for murder, by the way, but for all felonies—including, for example, horse thieving, as anyone can verify by watching a western movie). And so it is clearly permitted today.”

A Method of Interpretation as the Highest Good to be Followed

In the shifty and slippery language of legalese this method of interpretation is called strict constructionism. If a constitution or some other primary legal code of a state says and has said since its composition that a particular act is legal then this is what a Christian strict constructionist judge must accept as his or her duty to support and enforce via the police power of the state. Hence Antonin Scalia, Christian, is just doing his job, in following precedent over the teachings of Jesus, sending people to death that the law designates should be killed. How this differs from the following reflection by Thomas Merton is beyond my rational power to discern:

“Adolph Eichmann and others like him felt no guilt for their share in the extermination of the Jews. This feeling of justification was due partly to their absolute obedience to higher legal authority and partly to the care of an efficiency that went into the details of their work. This made the big business of death all the more innocent and effective because it involved a long chain of individuals, each of whom from bottom to top could feel himself absolved from responsibility and each of whom would salve his conscience with the meticulous efficiency he put into his part in the operation.”

Two points concerning the above: One, Antonin Scalia was lauded among his judicial peers for the exceptionally meticulous effort he put into his personal strict constructionist’s Constitutional interpretation upholding the death penalty. Two, in exterminating the Jews, Hitler and other

Germans like him broke no laws. Everything they did was legal. This is why the *ex post facto* law of so-called crimes against humanity had to be created. Anton Scalia broke no laws in the way he participated in the killing of people.

Are all Occupations Open to Christians to Pursue?

But *the* issue is, can a Christian in good faith morally take a job that requires him or her to do what Jesus never did, would never do and taught His disciple they should not do? Can a Baptized follower of Jesus join a group, that regularly as a normal part of being a group, engages in activities that Jesus could never be imagined doing, and that in no way could ever be interpreted as obeying Jesus' "*new commandment*" to "*love one another as I have loved you*"? Where does Jesus give His Baptized disciples divine permission to substitute the law and rules of a group for His revelatory teaching regarding the will of the Father, which He comes to earth to do and to teach by His words and deeds? Nowhere! He does not grant such permission to any disciple!

The Irrelevancy of Catholic Christianity to the Workplace

Yet, Antonin Scalia, so lionized in the Catholic press and among the Catholic hierarchy for his Catholicism, said in a 2007 address at a Villanova Law School conference, "The bottom line is that my Catholic faith seems to me to have little effect on my work as a judge. Just as there is no 'Catholic' way to cook a hamburger, I am hard pressed to tell you of a single opinion of mine that would have come out differently if I were not Catholic." Despite the fallaciousness of his hamburger analogy, his position is clear. The Jesus of the Gospels has nothing pertinent to say to him regarding killing people that other people say should be killed.

I can only ask again, "Where does Jesus give His chosen, Baptized disciple divine permission to substitute a group's rule or decision made by mere creatures for His revelation of the moral will of the Creator? Where does He present the option of being a part-time disciple? The Greek word from which baptized is derived means total immersion. From the moment of one's Baptism, there are no time-outs. Antonin Scalia's Catholicism as he relates it to his job is comparable to Mafia Catholic morality—staunchly Catholic in family values, excessive in tithing, receiving all the Sacraments, an exuberant respect for nuns and good liturgical theatre, but when it comes to the organization's business, Christianity and Catholicism are shut out completely. To repeat what I said in the beginning, "What concerns me is the eternal and temporal lethal frivolousness of his witness, indeed his false witness, to the Jesus of the Gospels and His teaching, while wearing his Christianity on his sleeve for everyone to see." And as also said in the beginning, what concerns me equally is the institutional Church aggrandizing his Christian witness to his fellow Christians and to the world. But then, laying aside the Gospel to pick up the gun is the entire history of Constantinian Christianity and its anti-witness to the truth of the teaching of Jesus in the Gospels for 1700 years. This, however, does not mean that the rulers of the institutional Church should be permitted to go forward unimpeded and unprotested—especially in view of the ultimate end that is at stake, specifically the eternal salvation of each and all.

Mosaic Law and State Law

In countering the anti-witness of Antonin Scalia to Jesus' teaching, it might be pertinent to be acutely aware of the commentary attached to the concluding verse, MT 28:20 of the Gospel of Saint Matthew, in the official Bible of the Catholic Church, THE NEW AMERICAN BIBLE:

'All that I have commanded you;' that is the moral teaching found in the Gospel, preeminently that of the Sermon on the Mount. The commandments of Jesus are the

standard of Christian conduct, not the Mosaic law, except where some of the Mosaic commandments have now been invested with the authority of Jesus.

Obviously the Mosaic Law's *lex talionis* has not been invested with the authority of Jesus for Christian conduct, since He explicitly repudiated it in the Sermon on the Mount (MT 5:38-42), as well as, by His entire life and on the cross—where He did not retaliate by calling down curses of death on those killing Him, but instead mercifully loved, prayed for and forgave His enemies who were His murderers.

Now although it is blatantly evident, it probably needs to be explicitly mentioned here, that Jesus also did not teach His Church or its leaders to substitute philosophy, liberal or conservative, as the standard of Christian conduct or as a way to downgrade, supersede, alter, transmogrify or otherwise render operationally nugatory His commandments and His Sermon on the Mount. It also should be patently evident, but equally in need of mentioning, that if "*the commandments of Jesus are the standard of Christian conduct, not the Mosaic law,*" then "*the commandments of Jesus are the standard of Christian conduct*" and not some secular state law put together by post-ORIGINAL SIN men and women.

Examination of Conscience and the Beam in One's Own Eye

Antonin Scalia wrote regarding his unalterable support of killing human beings that have been designated by some process of law to be no longer worthy of life that, "If the system that has been in place for 200 years (and remains widely approved) 'shocks' the consciousness of the dissenters [to the death penalty], perhaps they should doubt the calibration of their consciences, or, better still, the usefulness of 'conscience shocking' as a legal test." The accepted mythology behind such a statement by a Christian would take volumes of exegesis to unpack. But what is clear and spiritually staggering in the face of the teachings of Jesus is that Antonin does not seem to think he needs to doubt the calibration of his own conscience. To a literate outsider who has read the teaching of Jesus in the Gospels, to hear a Christian—who participates in the name of some code of law in legally killing helplessly bound and gaged prisoners—maniacally maintain that those Christians who disagree with him must consider re-calibrating their consciences, not him, must seem mind-boggling.

Time Choices and Eternal Consequences

The gigantic, unknown and unfathomable reality that a person enters after his or her last breath may or may not be tethered—as far as one can humanly see—to anything a person has done on earth. In faith, the Gospel reveals to us that there is a connection and that what we do on earth makes a difference in eternity. Human existence as lived is not just a meaningless conglomeration of choices in an eternally insignificant game in a sandbox. Believing "*Jesus is Lord*" makes a difference in time and in eternity. "*Whatever you do unto the least you do unto me,*" (MT 25:31-46) communicates an unbreakable link between an act in time and one's eternity. Praying to God to, "*Forgive us our trespasses as we forgive those who trespass against us,*" is not merely an oft-repeated mindless mantra, which is unrelated to human choices in time, the state of soul of a person and the process of eternal redemption. "*For with what judgment you judge, you shall be judged: and with what measure you measure, it shall be measured to you again*" (MT 7:2, 6:13; MK 4:24; Lk 6:37) is the absolute, infallible truth of the Word of God Incarnate Himself in the Gospels regarding an ineradicable dimension of reality beyond death. How these truths mentioned immediately above play-out in eternity is beyond human comprehension. That they are operative in eternity is certain truth because Christ-God teaches that they are.

The Integral Unity of the Will of God in Heaven and on Earth

The Catholic faith is clear. Under the heading THY WILL BE DONE ON EARTH AS IT IS IN HEAVEN the CATECHISM OF THE CATHOLIC CHURCH #2822 proclaims, “His commandment is that ‘*you love one another; even as I have loved you, you should love one another.*’ This commandment summarizes all others and express the entire will of the Father.” This *new commandment* of Jesus not only informs the Christian with *the* standard of right and wrong that he or she must adhere to in all his or her choices on earth, but also tells the Christian the relationship between people that exists in heaven, since the *new commandment* ‘*expresses the entire will of the Father*’ that is to “be done on earth as it is in heaven.” Hence, anyone who is invited into heaven by the Father and who desires to be in heaven and who freely accepts the Father invitation must irrevocably choose, as his or her Way of being, becoming and doing for all eternity, life in conformity with the *new commandment*. This is the choice one must make to enter into the Kingdom of God. Heaven, like God’s Will, Way and Love, is imposed on nobody. Nor, is it entered into simply by repetitive, private or public incantations. Heaven for the Christian is a Trinitarian Reality. It is a freely accepted insertion into the Love that exists among the Father, Son and Holy Spirit. It is active incorporation in, participation in and communion with the love (*agap *) that is God, Father, Son and Holy Spirit, and the never-ceasing sharing of that love with all other human beings who are in heaven. Heaven is loving God and neighbor for all eternity as Jesus loves God and neighbor. If a person does not want to do this, even towards a single brother or sister, he or she does not want heaven. For in heaven, by the free choice of God and by the free choice of every person in heaven, there is not a scintilla of non-Christlike love, not a mustard seed of mercilessness.

So, must the 1,282 people toward whom Antonin Scalia acted mercilessly on earth—by the standard of “*new commandment*” merciful love—now be merciful to Antonin, if heaven is where they want to be for eternity? It seems so, because there is no place or option for anything else but “*new commandment*” of Christlike merciful love in heaven. And, if one does not show Christlike merciful love towards the person who needs mercy, who is the Christian in heaven or on earth going to be mercifully loving towards?

And what of Antonin Scalia? Does he now have to love as Jesus loves the 1,282 victims of his un-Jesus-like mercilessness in order to enter into the Kingdom of the God, who is love? Does love as taught by Jesus require admitting evil has been done to some one and seeking forgiveness from and reconciliation with the person to whom you have done evil, e.g., destroying his or her life on earth by obeying a code of choices written by men and women rather than obeying the Word of God Incarnate?

Is being merciful toward the merciless the sacrament through which the merciless come to recognize Jesus and His truth, repent and become *merciful as their heavenly Father is merciful*?

Let us with purity of heart pray:

May the All Merciful Father somehow grant to the soul of your son, Antonin, and to all your sons and daughters, a merciful rest with the merciful saints in a place where mercy reigns supreme, and where there is no fear, no pain, no sorrow, no sighing, but only eternal Communion in the Love of God and with the God of Love. Amen.

—EMMANUEL CHARLES MCCARTHY