Death and Justice

By JOHN O'SULLIVAN, UPI Editor in Chief | May 9, 2001

1. Of the many controversies swirling around the death penalty, whether Timothy McVeigh's execution should be observed by the relatives of his victims is the most misleading, for it subtly discredits capital punishment by implying that it is a form of private revenge for the benefit of the victims' families.

2. Admittedly there is a link between justice and revenge. Bacon expressed it well when he described revenge as "a kind of wild justice." When we move from a state of nature to a civilized society, however, we give up our rights of self-protection and revenge in return for the state's promise of justice and retribution. And McVeigh's execution is the expression of that public retribution rather than of private revenge.

3. The 18th century took this view even further, holding that public retribution required a public execution. As Dr. Johnson pointed out, this gave a certain dignity to the condemned man who was visibly paying for his crimes. He would sometimes make a speech of repentance and admonition from the gallows: "Friends, be warned by my fate. Here is the dreadful consequence of a life of crime. I go now to seek mercy from the God who will judge us all. Pray for my wretched soul. Etc."

4. We no longer hold public executions because we think ourselves more civilized. In fact, we may merely be more squeamish. Restricting the seats at an execution to a victim's family is arguably less justifiable than a public gallows. For it treats a man's death not as an awesome punishment for a terrible crime but as a means of emotional compensation for those he has injured. Retributive justice is thus replaced by therapeutic revenge—a step towards our sentimental modernity but away from a civilized rule of law.

5. Of course, some argue that the death penalty is uncivilized by its very nature. But the death penalty, like all formal legal punishments, is a sign of civilization. It is to civilization what lynching, vendettas, and vigilantism are to barbarism and anarchy. Those who describe capital
punishment as "barbaric" are generally defining "civilization" and "barbarism" quite arbitrarily to mean whatever they like or dislike. Thus when they say "The death penalty is uncivilized," their words should be translated as "We don't like the death penalty." That is not a statement about reality, nor a logical argument, but a pure expression of preference.

6 To be sure, some undoubtedly civilized European nations have abandoned the death penalty in favor of other punishments in the last few decades. But the political elites in those countries usually did so over majority public opposition. What that demonstrates is not that Europe is more civilized than the United States but that it is less democratic.

7 So we come finally to the argument that the death penalty is a cruel and unnecessary punishment offensive to religious (and specifically Christian) morality. In recent years something like this view has been adopted by no less a figure than Pope John Paul II. This has raised difficult questions for Catholics (and indeed other Christians) who have thus far supported capital punishment.

8 They will be helped through the theological thickets by a fine article in the April issue of the religious magazine, First Things, by the newly-created Cardinal Avery Dulles (the son of John Foster Dulles.) Cardinal Dulles agrees with the pope. But because the death penalty is a question that mixes both moral and secular prudential judgments, he also makes room for conscientious disagreement by Catholics after prayerful consideration of the church's teaching.

9 The cardinal's strongest points, as it seems to me, are that the death penalty should not be imposed, first, if there is a serious risk of wrongful execution and, second, if the legitimate purposes of punishment can be equally well achieved by imprisonment. He feels that these considerations override the traditional Christian endorsement of capital punishment. But do they?

10 Take miscarriages of justice first. The number of known wrongful executions is tiny and the legal safeguards against it are so strict that very few murderers ever reach the electric chair. The last federal execution, for instance, took place 38 years ago. Above all, the arrival of DNA -- which has both exonerated some people on Death Row and increased public nervousness about
capital punishment -- ensures that the already low risk of wrongful execution will now be reduced still further. Since there was a risk of wrongful execution down the centuries when the church supported capital punishment, our recent progress to a lesser risk strengthens the case for it.

Nor can imprisonment effectively mimic the death penalty for the very clear reason that it is less final. Some murderers are imprisoned, released, and able to murder again. As Professor Paul G. Cassell pointed out in his testimony to the House Judiciary Committee in 1993: "Of the roughly 52,000 state prison inmates serving time for murder in 1984, an estimated 810 had previously been convicted of murder and had killed 821 persons following those convictions. Executing each of these inmates following their initial murder conviction would have saved 821 innocent lives."

Nor does life without parole entirely solve this problem: five of the murders were committed in prison. Again, we have no reason to think that in the modern world imprisonment safeguards us as effectively as capital punishment.

Where Cardinal Dulles does persuade me is in rejecting public executions on the grounds that, in our debased "Survivor" and MTV culture, they would quickly be transformed from an awesome deterrent into bloodthirsty Roman spectacles -- unless, final irony, the death penalty is abolished even as our society spirals downwards into a new sort of barbarism which mingles casual cruelty with sentimentality and moral self-congratulation