

Scalia Backs Feudal Law Against Democracy

by Marianna Wertz

Supreme Court Associate Justice Antonin Scalia, the high court's leading advocate of the death penalty though an avowed Roman Catholic, made a startlingly vicious attack on both American representative democracy, and Pope John Paul II, in a Jan. 25 speech. Scalia spoke as part of a panel discussion on "Religion, Politics, and the Death Penalty," at the Pew Forum's Conference on Religion and Public Life at the University of Chicago. While the event, and Scalia's attack on papal teaching, were widely covered in the American media, his assault on representative democracy was largely ignored by a press seeking scandal rather than substance.

The speech confirmed the warning on Scalia made by Lyndon LaRouche shortly after the 2000 Presidential election was resolved through Supreme Court intervention. LaRouche pointed to the extreme danger posed by the radical empiricist legal doctrine espoused during those dangerous days by Scalia (see *EIR*, Jan. 1, 2001).

Likening Scalia's legal doctrine to that of Napoleon Bonaparte or Prince Metternich's Holy Alliance, LaRouche wrote: "It were inevitable, that if the doctrine expressed by Scalia, were to continue to prevail at the highest levels of the U.S. government, that under the conditions of crisis now confronting the U.S.A., and also the world at large, the result must either be a form of a dictatorship in the U.S.A. as bad, and probably worse than that in Germany under the Hitler dictatorship; or, should such a dictatorship fail, as is likely, the worst dark age in the recent memory of our planet."

Scorning the Pope

While Scalia has been defying Catholic teaching on the death penalty for years, this was the first public airing of his "reasoning" in support of capital punishment—reasoning which he derives from his embrace of "the divine right of kings," as he phrased it. Making public what he has practiced on the Court, Scalia attacked Pope John Paul II, and the changes which the Pope has brought about since 1997, when the new catechism of the Roman Catholic Church proclaimed that the death penalty should be excluded "in every case," without exception.

At the Pew conference, Scalia first made clear his radically nominalist view of Constitutional law. "The Constitution I apply is not living nor dead, but, as I put it, 'enduring,'" he said, rejecting the Constitution as a "living document" and thus open to interpretation by the Supreme Court. "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. . . . And so it is clearly permitted today as far as the Constitution is concerned."

He declared that Catholic jurists opposed to the death penalty—i.e., those agreeing with current Catholic teaching—should resign.

"You will gather from what I have said that I do not agree with [John Paul II's encyclical against capital punishment] *Evangelium Vitae* and the new Catholic catechism," Scalia said. "It seems to me that the encyclical either ignores or rejects the longstanding Church teaching that retribution is a valid purpose; indeed, the principal purpose of government punishment."

He declared that "the statement contained in *Evangelium Vitae* . . . does not represent ex cathedra teaching; that is, it need not be accepted by practicing Catholics, although they must give it thoughtful and respectful consideration." As to the catechism, he swept it aside with the statement, "I assume that is just the phenomenon of the clerical bureaucracy saying, 'Yes, boss.'"

Scalia's open defiance of the Pope on this issue, and his further embrace of a feudal Church, puts him in bed with advocates of the "empty seat" (*sede vacante*) theory in Catholicism—widespread in the Northern Virginia parishes Scalia frequents—the idea that the Apostolic See is "empty," because John Paul II is a heretic.

'Divine Right of Kings'

The speech also profiles Scalia as a major player in the ongoing attempted coup d'état against this nation's government. It places him squarely in the center of the Brzezinski/Kissinger/Huntington crowd's drive to turn America into a new British-style empire.

Scalia told the audience, "Few doubted the morality of the death penalty in the age that believed in the divine right of kings." But the millennia-old "consensus of Western thought" on capital punishment and the powers of the state "has been upset . . . by the emergence of democracy. It is easy to see the hand of almighty God behind rulers whose forebears, deep in the mists of history, were mythically anointed by God or who at least obtained their thrones in awful and unpredictable battle whose outcome was determined by the Lord of Hosts; that is, the Lord of Armies. It is much more difficult to see the hand of God or of any higher moral authority behind the fools and rogues—as the losers would have it—whom we ourselves elect to do our own will. How can their power to avenge, to vindicate the public order be any greater than our own?"

"So it is no accident," Scalia concluded, "that the modern view that the death penalty is immoral has centered in the West. That has little to do with the fact that the West has a Christian tradition, and everything to do with the fact that the West is the domain of democracy."