

*Red Mass, May 5, 2016  
Thursday of 6<sup>th</sup> Week of Easter  
St. Thomas Aquinas Cathedral*

Many years ago when I was in Rome, I was walking by the Tiber River and came upon some government buildings and one of them had inscribed atop its façade the words, “Ministero di Grazia e di Giustizia”—the Ministry of Grace and Justice. It was one of the buildings of the Ministry of Justice—one that dated back to the days when Italy was unified. The Ministry of Grace and Justice. I have to say I was amused by this. I thought if I were in Washington, D.C., it would be equivalent to seeing a sign describing the U.S. Attorney General’s office as the “Department of Mercy and Justice”. There’s a dissonance as we might not readily think the two go together. We may even think to put justice and mercy together is to juxtapose opposites.

But are they really? Doesn’t the administration of justice involve a certain degree of mercy? Presidents have the power to pardon. If I’m not mistaken, governors also have this power—they can commute sentences. They and supreme courts can stay executions. Judges can find reasons to mitigate sentences and lawyers appeal to them, in so many terms pleading for mercy on behalf of their clients.

As you may know, the Catholic Church is celebrating an Extraordinary Jubilee, a time of pilgrimage and grace, inaugurated last December by Pope Francis. It is a Year of Mercy and the theme is “Be merciful as God the Father is merciful”. Pope Francis says the name of God is mercy and the face of mercy is Jesus Christ. We see that face readily as we gaze upon the cross and see the one who laid down his life out of compassion for humanity. In seeking God’s mercy, as we say in the Lord’s Prayer, we commit ourselves to being merciful: “forgive us our trespasses as we forgive those who trespass against us.” In pleading for God’s mercy, we lay aside any claim to resentment, retribution or vengeance.

Forgiveness is just one way we can be merciful. There are others: the corporal and the spiritual works of mercy are concrete acts of charity arising from a sense of compassion for others, especially those in need or who are suffering. But in the administration of justice, how are we merciful? How does mercy fit in with justice?

When I was in the seminary I read an article by the late Protestant theologian Reinhold Niebuhr. During the 1940s he was probably the most influential churchman in the United States. The article I read was on the question of whether love can be an ethic for public policy. Justice should be, but what about love? After all, churches preach love; we preach love as God’s commandment. Could love be the guiding

principle for national or state policies? There were theologians—Protestant churchmen—who did advocate this position and Niebuhr criticized them for being idealistic and even sentimental. He considered himself pragmatic and a realist. However, he did believe there needed to be something more than justice. He said, “Any justice which is only justice soon degenerates into something less than justice. It must be saved by something more than justice.” For Niebuhr that something more is “moral goodwill”. Could it also be mercy?

I took Latin in high school and in my junior year the task was to translate Cicero, in particular, his Catiline Orations. Cicero, as you know, was a great Roman statesman and he was also a trial lawyer. His orations contained complex sentences and so for me—a junior in high school-- it was a miserable experience to translate. However, later on in life I came across a shorter text of Cicero’s that I found easier to translate. It was just four words—four words that became a legal maxim in the civil law tradition of continental Europe: “*Summum ius summa iniuria.*” And I translate it this way: the most rigid and fullest enforcement of the law leads to the greatest injury. Some have made this point in the discussions on mandatory sentencing and prison reform. They ask, Does the current system inflict more injury than justice on individuals and on society? Any justice which is only justice can lead to injury.

2016 marks the 400<sup>th</sup> anniversary of the birth of William Shakespeare. So it is appropriate to cite one of the Bard’s plays which wrestled with the relationship between justice and mercy: it’s “The Merchant of Venice”. As in his other plays there are many subplots but the primary one involves Antonio, the merchant, who tries to help out his friend Bassanio who is in need. He borrows money from Shylock, who does not like him at all. But he agrees to give the merchant the loan, on condition that, if Antonio does not repay by a certain date, Shylock will take a pound of his flesh. The merchant signs the deal but, alas, he fails to pay back the loan and Shylock goes to court to enforce its terms and get his pound of flesh.

At court a woman, Portia, who is disguised as a man and a scholar of the law, pleads on behalf of the merchant. She says to Shylock:

Though justice be their plea consider this—  
That in the course of justice none of us  
Should see salvation: we do pray for mercy  
And that same prayer doth teach us all to render  
The deeds of mercy.

Indeed, who would see salvation if the pound of flesh were taken, if the full measure of the law were enforced? In this instance, is not the appeal to mercy an appeal to human decency or even to common sense? But we know that even in our day there are countries where the system of law requires punishment by hacking off hands and arms, if not heads in the name of justice.

Some may think mercy is equivalent to laxity, a threat to justice, soft on law and order. St. Thomas Aquinas thought otherwise. He said, “[M]ercy does not destroy justice, but in a sense is the fullness thereof.” Mercy rounds out justice. They go together. Mercy is something justice needs so that it does not degenerate into something less than justice.

So in this Extraordinary Jubilee Year of Mercy, I ask you to consider the place of mercy in your work of justice. And let me close with Shakespeare’s hymn to mercy in his play, “The Merchant of Venice”:

The quality of mercy is not strain’d;  
It droppeth as the gentle rain from heaven  
Upon the place beneath: it is twice bless’d;  
It blesseth him that gives and him that takes;  
It is mightiest in the mightiest, it becomes  
The throned monarch better than his crown,  
His scepter shows the force of temporal power,  
The attribute to awe and majesty,  
Wherein doth sit the dread and fear of kings  
But mercy is above this scepter’d sway,  
It is enthroned in the heart of kings,  
It is an attribute of God himself;  
And earthly power doth then show likest God’s  
When mercy seasons justice.