

# Are Merciful Judges Unjust?

A Discussion of Mercy and Justice

Based on the Writings of Saint Thomas Aquinas

Undergraduate Thesis

Megan Smienk

April 26, 2010

University of Lethbridge

## Introduction

*“Mercy, detached from Justice, grows unmerciful.”*

- CS Lewis

Since Canada abolished the death penalty in 1976, the federal government has made a habit of requesting clemency for Canadian citizens facing the death penalty abroad. Yet in 2007, the Conservative Government announced that it would no longer automatically request clemency for those on death row but would look at the issue on a case by case basis.<sup>1</sup>

One of the most well known cases affected by this policy is that of Ronald Smith. Smith hitchhiked to Montana in 1982 and was picked up by two Native Americans. He later shot his hosts in order to steal their vehicle. He was arrested, confessed to the killings and was sentenced to death. As of today, he is still on death row in Montana. Although the government had been seeking clemency for Smith for many years, the 2007 decision halted the clemency appeal. Another case that has been affected by this policy change is that of Mohammed Kohail. Kohail is a Canadian citizen who was alleged to have killed a man in a school-yard brawl in 2007 in Saudi Arabia. He was found guilty and sentenced to a public beheading. After reviewing his case, the Canadian government decided to seek clemency for Kohail.

While there are many complex issues surrounding these cases, the Vice-President of Ipsos-Reid (the company that had conducted a public survey about Canadians' opinions on the Smith case) said that the “clemency issue boils down to a debate between those who see capital punishment as a ‘moral wrong’...and those who believe Canada should be reluctant to ‘invade

---

<sup>1</sup> CBC News. “No more clemency appeals for Canadians on death row in U.S.: Tories” November 1, 2007. <http://www.cbc.ca/canada/story/2007/11/01/death-penalty.html>

the legal space of another jurisdiction.”<sup>2</sup> While these sides of the debate are certainly pertinent, both positions presuppose that clemency should even be an option.

Therefore, instead of focusing on capital punishment, I want to explore the idea of pardon. A pardon allows a criminal to escape his punishment. Punishments vary according to the laws of the land but can include death or imprisonment. A pardon that commutes a death sentence (as is being requested in the examples listed above) is simply the most visible example of the power of pardon. But is being merciful unjust? Justice demands that a criminal should be punished for breaking the law. For example, it is generally accepted that those who drive under the influence of alcohol should have their licence taken away, thieves who rob a store should have to return the stolen merchandise, and those who vandalize buildings should have to restore the property to its original state. If these crimes, which are less vicious than murder, should be punished, it follows that murder too should be punished. Yet a pardon would allow a criminal to get away with breaking the law. Therefore, pardons, as an act of mercy, seem to undermine justice and the judicial system by declaring the laws and judgement of the state to be incorrect. In their book “Forgiveness, Mercy and Clemency” editors Austin Sarat and Nassar Hussein go so far as to call clemency “legally sanctioned a legality.”<sup>3</sup> Yet if a society functions on a legality, it will likely become a lawless, unwieldy and anarchic state. This predicament forms the central question of my thesis: can mercy have a place in the structure of justice?

The relationship between mercy and justice and its place in the political context has been a long-debated issue. The classical Greek philosophers understood that justice was essential to

---

<sup>2</sup> Canwest News Service, “Canadians support new stand on clemency, poll” January 31, 2008, <http://www.canada.com/topics/news/national/story.html?id=dfc55242-ee80-47b8-a134-867ebe85cd65&k=71463>

<sup>3</sup> Austin Sarat and Nassar Hussein, *Forgiveness, Mercy and Clemency* (Stanford, Stanford University Press, 2007), 6.

the polis, but still recognized a need for compassion and love, especially from their leaders.<sup>4</sup> The impact of Christianity on the social, political and judicial world intensified the debate. When Christianity began to pervade the public political world, scholars debated to what extent the religious commands were pertinent to political life. In the case of the relationship between justice and mercy, scholars argued to what extent one could obey and implement both parts of the command to “to do justly and to love mercy”<sup>5</sup> in both private and public actions.

One of the most well known and respected scholars who sought to explain these issues was Saint Thomas Aquinas. Aquinas’ *Summa Theologica* is a document of incredible detail and scope and is one of the best sources for an extended discussion of justice, mercy, and the relationship between the two. As a monk devoted to his faith, Aquinas drew extensively on Christian philosophers such as Augustine and Gregory, but was also well versed in the Greek philosophical ideas of Aristotle and Plato. In his chapter on Aquinas’ treatment of punishment, author Peter Koritansky writes that “Aquinas’ political thought derives from a blending (or compounding) of Aristotle’s *Politics* with an essentially Christian metaphysical and theological teaching.”<sup>6</sup> Therefore, while he understood the world in terms of Christianity, his work is still relevant as it encompasses many of the ideas and thoughts that shaped western civilization. In addition, Aquinas wrote in what is called the disputational style: set up the points of an argument and then contrast it with the justifications for the opposing side. By employing this style, Aquinas presented not only his own ideas but also the opposing sides of his argument which allows the reader to judge for himself which side bears more weight. Although the writer is able

---

<sup>4</sup> *ST II-II*, 30, 3. In this section, the advisor Cicero praised Caesar for his moments of compassion.

<sup>5</sup> Micah 6:8 (King James Version)

<sup>6</sup> Peter Koritansky, “Chapter 4: Christianity, Punishment, and Natural Law: Thomas Aquinas’ Pre-Modern Retributivism” in *The Question of Punishment: Essays in the history of Political Thought* ed. by Peter Koritansky, Unpublished Manuscript.

to choose the points which he can refute which consequently throws the neutrality of the debate into question, this style still gives readers a comprehensive view of both sides of the argument, encourages discussion, and promotes well rounded thinking.

For these reasons, Aquinas is the best source for a philosophical discussion about the relationship between justice and mercy. Therefore, the first part of this thesis will focus specifically on Aquinas' "Treatise on Justice" and will look at Aquinas' definition, relative importance and expression of justice. Secondly, this thesis will outline Aquinas' views on the definition and various components of mercy. The last chapter will conclude with a description of Aquinas' view that while justice should govern our relationships with others, acts of mercy are not unjust between private citizens or the state so long as they are performed in appropriate circumstances by appropriate figures towards other appropriate individuals. This final section will use the examples of the Ronald Smith and Mohammed Kohail stories as case studies to further explore the relationship between mercy and justice and examine the relevance of Aquinas' argument for post modern audiences and situations.

## CHAPTER 1: JUSTICE

*"Justice is the fundamental law of society."*

-Thomas Jefferson

To understand how mercy affects justice, a full understanding of the relevant components of justice must first be explored. An exposition of three components is essential to gain a clear grasp of what Aquinas meant by 'justice.' The first component is that of the definition. While Aquinas provides a relatively simple definition, it incorporates many facets that should be examined. The second component is the purpose of justice. Justice is not simply for one individual but for the entire community. Finally, the administration of justice will be examined as it is the component that most directly relates to the modern case studies of murder and is also the most problematic component of justice that mercy must address.

### **Definition of Justice**

Aquinas' (and Aristotle's) definition of justice is that it is "a habit whereby a man renders to each one his due by a constant and perpetual will."<sup>7</sup> This definition might seem strange to modern readers who imagine justice as a value appropriate only in the legal realm. However, closer analysis proves that a wider definition of justice is more useful. For example, when people are cheated in business transactions, they often say "that's not fair" because they did not get what they felt they deserved. While this transaction may not have been a legally binding transaction, people still have an innate sense of what is due (particularly when it has been violated). Aquinas argued that it is from this inner sense of "due" that legal justice comes. Therefore to have a

---

<sup>7</sup> St. Thomas Aquinas, *Summa Theologica*, trans. and ed. by Fathers of the English Dominican Province, (Notre Dame, Indiana, Christian Classics, Ave Maria Press, 1981), II-II.Q 58 A1. Hereafter, the *Summa Theologiae* will be abbreviated as *ST*.

complete understanding of justice, the definition must be wide enough to incorporate both legal and non legal aspects of the term. Although Aquinas' term has a wide scope, it is not tidy and its various components must be explored for greater understanding.

The first part of Aquinas' definition deals with the motive for doing justice. By stating that justice must be done "by a constant and perpetual will"<sup>8</sup> Aquinas implied that justice involves a mental choice to do something or to refrain from doing something. Aquinas believed that human beings are motivated to act by two things: the will or the sensitive appetite. By "will" he meant the part of the soul which desires to do something due to intellect.<sup>9</sup> The sensitive appetite is essentially the emotional or guttural response of a person. As the will is the part of the soul directed by intelligence, Aquinas said that it can therefore judge between two things. As justice is about the relationship between two people, the will must be the motivator for acting justly. However, human beings can desire or will many things but in order for them to truly be just, they must be appropriate things. For this reason, Aquinas says that the will must be directed by reason. Some would argue that there are cases in which someone acted justly without being aware of doing so, did it accidentally or was forced to do it. While these may result in good actions, Aquinas would not classify them as acts of justice if they were not directed by the reason governed will.

Justice is not concerned only with the interior movements of the heart but is also concerned with external actions. Justice is motivated by the reason directed will but should not remain as a good intention. Rather, justice is rooted in action because "we are not said to be just through knowing something aright"<sup>10</sup> but rather by doing something right. When actions

---

<sup>8</sup> Ibid.

<sup>9</sup> *ST I-II*, 9, 1.

<sup>10</sup> *ST II-II*, 58, 3.

motivated by the will are consistently repeated, they are called “habits.” According to Aquinas’ definition, justice should not be an isolated act but rather a habit because a man is not called a “just” man when he does one act of justice but when he consistently acts in a just manner.<sup>11</sup> When these habits are directed towards good objects, Aquinas described them as “virtues.” Aquinas (building on the work of Pope Gregory and Platonic writings) explained that justice is one of the four cardinal virtues. The word “cardinal” came from the Latin word that means “hinge” and implies that “a fully virtuous life turns on these...characteristics, which together comprise the sine qua non of the good life.”<sup>12</sup> As they originated from the natural and rational Platonic thought, these cardinal virtues of temperance, prudence, fortitude and justice are those in which any man could and should participate. Justice is special cardinal virtue because it relates both the interior good of a man’s soul and the good of another. However, while justice certainly is an important virtue, it does not alone indicate that a man is good. Aquinas, like Aristotle, was aware that “the virtue of the good man is not strictly the same as the virtue of the good citizen.”<sup>13</sup> This is due to the fact that just because one gives to another his due does not mean he is a kind, self-controlled or otherwise good person. Those who are strictly just and do not exercise other virtues are often negatively called “legalists” rather than good people because they give exactly what is due and never beyond. Therefore, while justice is important, it does not negate the need for other moral virtues as well.

Clearly, an action is required for justice. According to Aquinas’ definition, the action itself is to “render to each one his due.”<sup>14</sup> While seemingly precise, this phrase complicates the notion of “justice”. It is implied in the definition that justice is an action that moves something

---

<sup>11</sup> *ST II-II*, 58, 1.

<sup>12</sup> Mary M. Keys, *Aquinas, Aristotle, and the Promise of the Common Good*, (Cambridge: Cambridge University Press, 2006), 132-133.

<sup>13</sup> *ST II-II*, 58, 6.

<sup>14</sup> *ST II-II*, 58, 1.



*from one to another*. Therefore justice is a relational act. While some might say that you should “render due” towards an animal or inanimate being or expect justice from it, Aquinas argued that this cannot be considered justice because justice is motivated by rational intelligence which is only found in humans. Aquinas believed that “irrational animals act willingly but not from choice.”<sup>15</sup> As justice requires a rational choice, animals that lack the capacity to choose cannot be involved in justice. For example, you cannot accuse a killer whale of murder for killing a trainer or a tornado of theft for taking your house. While these events may be tragic, they are not acts of injustice in so far as they are deliberate choices made by a rational being that can direct his will. On the other hand, if a person commits murder or takes your property away from you, he may be accused of committing an unjust act as it was his action, motivated by his will, which took something from you. The relational concept of justice plays an important role in Aquinas’ overall definition of justice.

The second aspect of Aquinas’ definition of the act of justice is that it implies belonging. In order to have something due, one must be able to own something. Aquinas was well aware that some might believe that you cannot really own something and that everything should belong to the community. Although he understood that there are indeed common goods, he believed that once they were distributed, they were to be considered as something belonging to that individual.<sup>16</sup> While he did not extensively explain his views on individual property like Locke or Hobbes, he simply believed that when people own something and it belongs to them, there is ‘equality’. Aquinas’ ‘equality’ was not referring to the post-modern notion of conformity to sameness but rather to the idea that when you are in possession of the things you own (however

---

<sup>15</sup> *ST I-II*, 13, 2.

<sup>16</sup> *ST II-II*, 61, 1.

many or few that may be) there is “equality of proportion.”<sup>17</sup> This is what Aquinas calls distributive justice because “the mean is observed, not according to equality between thing and thing, but according to proportion between things and persons: in such a way that even as one person surpasses another, so that which is given to one person surpasses that which is allotted to another.”<sup>18</sup> For Aquinas, equality does not simply mean that everyone has the same amount but rather that they have what is due to them in proportion to their station. He says that station is determined by the type of regime in which one lives. For example, “prominence in an aristocratic community is gauged according to virtue, in an oligarchy according to wealth, in a democracy according to liberty, and in various ways according to various forms of community.”<sup>19</sup> Finally, by “goods” Aquinas did not simply mean material goods but also believed that non-material goods (such as reputation) were aspects of what one is due according to the act of justice.

### **Purpose of Justice**

From the discussion above, it is evident that Aquinas placed a great deal of importance on the act of justice but it has not yet been explained why he believed justice was essential. The purpose of justice according to Aquinas is twofold because it has purpose at both the individual and at the community level. On the individual level, Aquinas said that the virtue of justice is important because (like other virtues) “renders a human act and a man himself good.”<sup>20</sup> According to Aquinas, people find pleasure, delight, and happiness in good and perfect things and therefore as being virtuous will make a man good, it will also make him happier.<sup>21</sup>

---

<sup>17</sup> *ST II-II*, 58, 11.

<sup>18</sup> *ST II-II*, 61, 2.

<sup>19</sup> *ST II-II*, 61, 2.

<sup>20</sup> *ST II-II*, 58, 3.

<sup>21</sup> *ST I-II*, 5, 1.

As was stated earlier, justice is a special virtue because it is not exclusively for the benefit of the person practicing it but also for the recipient of the action. The second purpose of justice reflects this. In addition to making the person who is acting justly happier, doing good towards another person indirectly affects the entire community. Aquinas said that “all who are included in a community, stand in relation to that community as parts to a whole; while a part, as such belongs to a whole, so that whatever is the good of the part can be directed to the good of the whole.”<sup>22</sup> Therefore, by doing good to one other person, one is also doing good for the community and advancing the common good (*bonum commune*). Yet this raises the question: “what is the common good?” As the end of each individual is happiness, it follows that the end of the community is happiness as well but Aquinas did not concretely define what this community happiness (common good) was. In her work on Aquinas’ views of the common good, Mary M. Keys writes that there are a variety of “common goods in which Aquinas considers human persons naturally inclined to participate: the domestic or familial good...the social and civic common good; the good of the universe or “cosmopolis”; and the divine good.”<sup>23</sup> While the divine and universal good were the same for all people, Aquinas was aware that there were a variety of communities<sup>24</sup> and therefore the “social and civil common good” would depend on the type of community in which one lived. For example, in a democracy, the common good is greater liberty. One of the best examples of how the common good of a democracy is the pursuit of liberty comes from the election night victory speech of U.S. President Barack Obama. He said that “the true strength of our nation comes not from the might of our arms or the scale of our wealth, but from the enduring power of our ideals: democracy, liberty, opportunity, and

---

<sup>22</sup> *ST II-II*, 58, 5.

<sup>23</sup> Keys, *Aquinas, Aristotle, and the Promise of the Common Good*, 121.

<sup>24</sup> *ST II-II*, 61, 2.

unyielding hope.”<sup>25</sup> From this quote it is clear that the common good does not consist in doing all of the same activities but rather in pursuing the common ideals of the community. While most modern critics would argue that democracy is the best form of community, Aquinas did not agree. In his work on Aquinas’ view of political system, Mark Murphy states that “although [Aquinas] held that some form of monarchy is absolutely speaking the best form of government, he strongly emphasized the fact that the differing conditions within distinct political communities precluded the possibility that one form of government would function best for each.”<sup>26</sup> For example, aristocracies pursue virtue and oligarchies pursue wealth and each of these pursues its goal “in various ways according to various forms of community.”<sup>27</sup> However, while he understood that the good of the common would vary from community to community, Aquinas said that the common good of all communities must consist of “justice and peace.”<sup>28</sup> As a constituent of the pursuit of the common good, the purpose of justice at the community level is therefore to “produce and preserve happiness and its parts for the body politic”<sup>29</sup> although what each community views as its happiness varies.

### **Administration of Justice**

While understanding and philosophizing about justice is important, Aquinas made it clear that he believed that justice existed in the actions of people “as an executive and administrative virtue.”<sup>30</sup> This next section focuses on Aquinas’ vision for how justice would be visible and

---

<sup>25</sup> New York Times, “Obama: Victory Speech” November 5, 2008.

<http://elections.nytimes.com/2008/results/president/speeches/obama-victory-speech.html#>

<sup>26</sup> Mark C. Murphy, “Consent, Custom, and the Common Good in Aquinas’s Account of Political Authority,” *Review of Politics*, 59 (1997): 349.

<sup>27</sup> *ST II-II*, 61, 2.

<sup>28</sup> *ST I-II*, 96, 3.

<sup>29</sup> *ST I-II*, 90, 2.

<sup>30</sup> *ST II-II*, 60, 1.

present in the community. This is what the Canadian constitution calls “the administration of justice.”<sup>31</sup>

As was stated above, justice is necessary to direct actions towards others. A healthy community comprised of virtuous people (as discussed above) works towards the common good of the community. However, as a community is made up of individuals with varying opinions, it is necessary to have some direction regarding how to accomplish the common good as well as a way of deterring and restraining those who threaten the common good. As discussed above, the common good is directed by justice, the act of “rendering to each his due”. Aquinas said that the expression of justice in the community is law<sup>32</sup> which he fully defines as “an ordinance of reason for the common good, made by him who has care of the community, and promulgated.”<sup>33</sup> These qualifications will be explored further on but from this definition, it is clear that while some might not agree with every law, if it is made by someone who has the authority of the community (by which he means the sovereign or council), if it is published (so that all are aware of its content) and is for the common good (as discussed above), the law must be followed. While laws are often seen as hindrances, Aquinas saw laws as a positive structure for society in which the common good for the community could be protected and pursued.

## **Law**

As stated above, justice helps to structure the community’s pursuit of the common good. Justice does this through its expression in law.<sup>34</sup> Aquinas explained that there are three types of law that direct men to act according to the common good: Divine Law, Natural Law and Human Law. As this thesis is primarily concerned with the judicial systems of the state, I will mention

---

<sup>31</sup> Canada, “Constitution Act 1867” Part V, § 92.14 <http://laws.justice.gc.ca/en/const/3.html>

<sup>32</sup> *ST II-II*, 57, 1.

<sup>33</sup> *ST I-II*, 90, 1.

<sup>34</sup> *ST II-II*, 57, 1.

Divine and Natural law but focus primarily on Human Law. Divine Law is that which directs men towards eternity, governs their hearts, will punish all evil deeds, and is perfect and eternal.<sup>35</sup> Natural Law is that in “which a man is inclined according to his nature”<sup>36</sup> and the main tenet of which is that as man is a rational being and understands that he is a being, he will want to do good towards his being. “Hence this is the first precept of law: that “good is to be done and pursued, and evil is to be avoided.”<sup>37</sup> Natural law therefore is concerned with the general principles that are timeless, govern humanity, and direct men towards virtuous acts in general.<sup>38</sup> However, while the natural law is known to all men as truth that they are able to grasp by speculative reason,<sup>39</sup> there is also another side to reason that needs to dictate how to act in specific circumstances. Therefore, although they are governed by the great truths of Divine and Natural Law, the specific and practical principles of justice are to be found in Human Law.

For example, the general principle from the natural law “to do good” in a modern context would include not taking someone else’s life. Therefore, methods of operating a vehicle are governed by driving laws. Following these laws will avoid accidents and doing harm to oneself or another. However, the specific ways in which motorists adhere to the natural law is followed differently in different countries. In England, the human law requires that motorists drive on the left hand side of the road while in Canada the human law requires vehicles to stay on the right hand side of the road. While both countries are seeking to maintain peace by establishing driving laws, the specific and practical principles are different and must be determined by Human law.

---

<sup>35</sup> *ST I-II*, 92.

<sup>36</sup> *ST I-II*, 94, 3.

<sup>37</sup> *ST I-II*, 94, 2.

<sup>38</sup> *ST I-II*, 94, 4.

<sup>39</sup> *Ibid.*

## Human Law

According to Aquinas, the person who has the power and authority to make human law is the sovereign. As the individual vested with the powers of the community (by election, appointment or by inheritance), the sovereign has a special role in administering justice. As the goal of justice (as stated above) is the common good and the sovereign has the ability to oversee the common good for his community (through the creation of laws and administration of justice) he must be the example of justice. The sovereign's role is to be the "guardian of justice"<sup>40</sup> for his community and thus, he must possess the virtue of justice so that all of the laws he creates will be just. In fact, Aquinas believed that he must have the virtue of justice to such an extent that it becomes "a master-virtue, commanding and prescribing what is just."<sup>41</sup> As justice flows from the will governed by reason and that "there pre-exists in the mind an expression of the particular just work which the reason determines", any man can develop the virtue of justice and every leader should.

The laws that the sovereign makes should reflect the good of the community that he governs. Therefore, it is very important that laws be promulgated (published) so that all will be aware of their expectations and responsibilities to maintain peace and justice. However, it is important to understand that Aquinas knew that the majority of men in a community are not virtuous and creating Human Laws that would require complete virtue would be foolish and set an impossible expectation. Human Laws therefore are made only for the limiting of the major vices (such as murder and theft) "from which it is possible for the majority to abstain; and chiefly those that are to the hurt of others, without the prohibition of which human society could

---

<sup>40</sup>ST II-II, 58, 1.

<sup>41</sup>ST II-II, 60, 1.

not be maintained.”<sup>42</sup> Therefore, the purpose of human law, he said, is namely that “in fear thereof human audacity might be held in check, that innocence might be safeguarded...and that the dread of punishment might prevent the wicked from doing harm.”<sup>43</sup> To accomplish this purpose, Aquinas said that Human Law has two parts: the ability to judge human actions and the ability to use coercion to move people away from evil and towards virtue.<sup>44</sup>

The first part of Human Law that Aquinas identified is its power to judge human acts. Aquinas said that it is the sovereign who has the authority of the community and therefore the authority to judge according to the common good. However, he may not be able to judge every case on his own, particularly when he is the ruler of a large population. Therefore, Aquinas directed that there should be individuals to judge specific cases according to the laws set out by the sovereign and these individuals should be considered the “personification of justice.”<sup>45</sup> As the word “personification” denotes, judges do not have the full authority of the sovereign himself and are therefore more limited in their judgements, but they are useful for the administration of the just laws created by the sovereign. The judgements that these judges pass must be “a statement or decision of the just or right.”<sup>46</sup> When passing judgement, Aquinas said that there are three aspects which must be brought into consideration for it to be deemed a just judgement. Primarily, justice must “proceed from the inclination of justice; secondly it come from one who is in authority; thirdly, that it be pronounced according to the right ruling of prudence. If any one of these be lacking, the judgement will be faulty and unlawful.”<sup>47</sup> To proceed from the inclination of justice means that the judgement is proceeding from the expression of justice as set

---

<sup>42</sup> *ST I-II*, 96, 2.

<sup>43</sup> *ST I-II*, 95, 1.

<sup>44</sup> *ST I-II*, 90, 5.

<sup>45</sup> *ST II-II*, 60, 1.

<sup>46</sup> *ST II-II*, 60, 1.

<sup>47</sup> *ST II-II*, 60, 2.



out in the laws of the community. However, there will also be certain cases when applying the law may cause harm rather than good. Therefore, Aquinas said that judges must be aware that the law is meant to personify justice and if a law would cause harm or injustice, then the judges should “set aside the letter of the law and...follow the dictates of justice and the common good.”<sup>48</sup> Having the ability to determine what laws will cause injustices in certain cases is what Aquinas called the virtue of *epikeia* (equity) and explained that it is an important virtue for judges to possess. Secondly, that a judgement comes from authority means that it comes mainly from the sovereign but can be manifested in his designate. Finally, Aquinas made it clear that as far as possible, judgements should be made directly according to the law and not according to the discretion of the judge for three reasons: first it is “easier to find a few wise men competent to frame right laws than to find the many who would be necessary to judge aright of each single case”<sup>49</sup>, secondly, because making laws can allow time for contemplation whereas judgement about particular cases is expected immediately, and finally because lawgivers consider the greater ramifications of their work whereas judges only look at the present facts before them.

The second part of Human Law is its ability to punish those who threaten or act in opposition to the common good. Aquinas said that individuals and the law encourage and teach others to act virtuously (which benefits all and is for the common good) but that they do not have the authority to penalize those who threaten the common good. Rather, the authority to punish comes from the guardian of the common good, the sovereign.

According to Aquinas, there are two parts to punishment. The first is that of restoration. As unjust actions are contrary to the common good and deprive someone of something that is owed to him, the law requires that a person must restore the equality of justice and return what is

---

<sup>48</sup> *ST* II-II, 120, 1.

<sup>49</sup> *ST* I-II, 95, 1.

due. When he mentioned “due” Aquinas did not simply mean material goods but also referred to “things which though they be transitory in reality, yet remain in their effect; whether [they] touch his body...or his reputation.”<sup>50</sup> Therefore, if someone takes a material possession away from another or harms the other person’s physical body or reputation this is considered an act of injustice. This is why not only theft but also crimes such as assault, rape, negligence and defamation are considered crimes. The remedy for any of these injustices “is applied by making restitution.”<sup>51</sup> Restitution essentially means restoring what was taken away. Aquinas discussed restitution thoroughly but for the purposes of this paper, it will be sufficient to say that he believed that “whoever is cause of an unjust taking is bound to restitution,”<sup>52</sup> that restitution is necessary, that it should restore the exact amount taken, and that it should be done immediately.<sup>53</sup>

However, Aquinas said unjust acts not only take something that is due to someone else but also are in opposition to the common good because they oppose the general values and laws of the community. For this aspect of the unjust act, Aquinas said that “the remedy is applied by punishment, the infliction of which belongs to the judge.”<sup>54</sup> Punishment must be made to fulfill the purpose of the law which is the preservation of the common good. As Peter Koritansky says, “The natural inclination to punish criminals directs us to preserving the common good by retaliating against those who threaten it.”<sup>55</sup>

While many people agree that those who break the law should be punished, there is often controversy surrounding what types of punishments are appropriate for crimes. On this point,

---

<sup>50</sup> *ST II-II*, 62, 1.

<sup>51</sup> *ST II-II*, 62, 3.

<sup>52</sup> *ST II-II*, 62, 7.

<sup>53</sup> *ST II-II*, 62.

<sup>54</sup> *ST II-II*, 62, 3.

<sup>55</sup> Koritansky, “Chapter 4.”

Aquinas offered two thoughts. First of all, punishments should be “medicinal rather than retributive.”<sup>56</sup> In this sense, he meant that the punishments should teach the offender why his action was wrong and what harmed it caused to another individual and the community and in turn, his punishment will have grave implications on his own life. The punishment should not be excessively harsh or light but rather should be of a type and quantity that leads to the reformation of the criminal. Aquinas wrote that punishment should be “in the character of medicine, conducing either to the amendment of the sinner, or to the good of the commonwealth.”<sup>57</sup> However Aquinas didn’t fully explain exactly what punishments should be prescribed for which crimes. Aquinas believed that as the unjust act was in opposition to the common good that was determined by the community, the punishment should also be determined by that specific community alone. He said that “the law of nature has it that the evil-doer should be punished; but that he be punished in this or that way, is a determination of the law of nature....those things which are derived in the second way, have no other force than that of human law.”<sup>58</sup> Therefore, while Aquinas believed that evil-doers should be punished, he left the exact type and amount of punishment up to the community.

Before examining if mercy can fit into this framework of justice that Aquinas set out, it is valuable to apply all of his comments on justice as described above to a specific example for the clarification of his points. As the case in which we will address mercy is the request for clemency from the Canadian government for citizens facing the death penalty abroad, and the general cause of receiving a sentence of capital punishment is committing murder, the act of murder will serve as a case study.

---

<sup>56</sup> *ST II-II*, 66, 6.

<sup>57</sup> *ST II-II*, 68, 1.

<sup>58</sup> *ST I-II*, 95, 2.

## **Example of Murder as an Unjust Act**

First of all, we must decide whether murder is unjust. According to Aquinas, the definition of justice is “a habit whereby a man renders to each one his due by a constant and perpetual will.”<sup>59</sup> From this definition, an unjust act would be an action whereby a man takes or hinders another’s due by his will. While accidents can still be acts of injustice, Aquinas said that “in weighing the gravity of a sin we must consider the essential rather than the accidental.”<sup>60</sup> For the purpose of this thesis, when the term “murder” is used, it will refer to a premeditated act. In Canada and most other commonwealth countries, this type of murder that is “planned and deliberate” is called “first degree murder.”<sup>61</sup> Secondly, as one’s own life is the most essential thing which one can “own”, depriving someone of his life would certainly be seen as taking from someone what is his and is therefore unjust. Therefore, murder fulfills both requirements for being an act of injustice.

Secondly, murder contradicts the purpose of justice: the common good. The common good allows men to develop their virtues in order to attain happiness but murder deprives a man of his ability to pursue virtue and is therefore an act in opposition to the common good. In addition, as stated above, an act of justice towards an individual can be seen as an act of justice towards the community because the individual was a part of the whole. In the same way, an act of injustice against one individual can be seen as an act of injustice against the entire community and therefore against the common good. As murder deprives one man of his life and the

---

<sup>59</sup> *ST II-II*, 58, 1.

<sup>60</sup> *ST II-II*, 64, 6.

<sup>61</sup> Canada, “Criminal Code of Canada” § 231 (2). <http://laws.justice.gc.ca/eng/C-46/20100121/page-0.html?rp2=HOME&rp3=SI&rp1=first%20degree&rp4=all&rp9=cs&rp10=L&rp13=50#idhit1>

community of an individual, it is clearly an act against the purpose of justice and its expression in law: the common good.

As murder is clearly an unjust act, Aquinas would have said that the perpetrator would have to make restitution by paying back whatever he took. As murderers take a life, according to Aquinas' idea of restitution, he must pay for it with his life. However, this would seem to erase the possibility of him serving a punishment that is "medicinal." Yet in this case (and for other major crimes), Aquinas believed that the security and the good of the community outweighed the importance of the criminal's need for medicinal treatment. He wrote that "therefore if a man be dangerous and infectious to the community, on account of some sin, it is praiseworthy and advantageous that he be killed in order to safeguard the common good."<sup>62</sup> Therefore Aquinas supported capital punishment for the sake of the common good, because a "life for life"<sup>63</sup> restores the inequality of proportion that occurs when one commits a murder.

After working through Aquinas' definition, purpose and administration of justice, it seems as though there is very little space for mercy within the structure of justice. However, Aquinas subscribed to the teachings of the Bible which include the command "to do justly and love mercy"<sup>64</sup> and does not therefore leave out a discussion of mercy from his argument for justice. Now that his views on justice are clear and a clear foundation has been laid upon which we can center the discussion, it is appropriate to turn the attention to mercy in itself and its ability to interact with justice.

---

<sup>62</sup> *ST II-II*, 64, 3.

<sup>63</sup> Exodus 21:23 (King James Version)

<sup>64</sup> Micah 6:8 (King James Version)

## Chapter 2: Mercy

*The quality of mercy is not strained;  
It droppeth as the gentle rain from heaven upon the place beneath.*

- William Shakespeare

The last chapter ended with a sombre case study of how Aquinas recommended dealing with murder in a just manner. From the description, it is clear that justice is essential to maintaining peace and the common good. Yet while justice is important, Aquinas did not go so far as to say that it is the ideal way to run a society. Rules and laws are important, but he considered them the starting point for a society rather than its best end. Aquinas said that “every virtue strictly speaking directs its act to that virtue’s proper end.”<sup>65</sup> Acts of justice direct a man’s actions towards the proper end of that virtue, the common good, but Aquinas did not believe that the common good was the highest good. That distinction belonged to the Divine good. Therefore, there must be something in Aquinas’ descriptions that is above justice that directs men and women towards the divine good and makes up for the places where justice is lacking. The purpose of this chapter is to explain charity, the virtue that is higher than justice, and mercy, charity’s derivative that enhances justice.

### Defining “Mercy”

Aquinas often drew from his philosophical predecessors to support his own arguments. As an admirer of Aristotle, it is not surprising that he begins with the Aristotelian definition of pity which is “sorrow for a visible evil, whether corruptive or distressing.”<sup>66</sup> However, while Aquinas appreciated Aristotle’s definition and discussion of pity, he did not see it as being able

---

<sup>65</sup> *ST II-II*, 58, 1.

<sup>66</sup> *ST II-II*, 30, 1.

to sufficiently account for all aspects of mercy because it was based on naturalist logic that didn't include Christian morals. Therefore, as Anthony Keaty explains, "while Thomas incorporates Aristotle's central observations concerning pity into the account of Christian mercy, Thomas places Aristotle's observations within the framework provided by Augustine's definition of mercy."<sup>67</sup> It is interesting to note that for the discussion of justice, Aquinas adopted the Aristotelian definition but for mercy, he turns to Augustine's explanation. The Augustinian definition of mercy that Aquinas adopted (and to which Keaty refers) is that mercy is "heartfelt sympathy for another's distress, impelling us to succour him if we can."<sup>68</sup> Keaty explains that Aquinas preferred this definition because it allowed him to feature Christian values at the center of mercy.<sup>69</sup> In addition, Aquinas saw this definition as appropriate because it reflected the meaning of the word "mercy" itself. He said that "mercy takes its name *miser cordia* from denoting a man's compassionate heart (*miserum cor*) for another's unhappiness."<sup>70</sup>

The three Thomistic aspects of mercy can be derived from Aquinas and Augustine's definition. The tri-partite definition explains that mercy is an action of assistance for another in distress, from one who has sympathy.<sup>71</sup> Before explaining what an act of mercy is, it is necessary to explain why mercy would be needed at all. Therefore, this chapter will begin by discussing the actors involved in mercy. After understanding the circumstances and parameters in which mercy would be appropriate, I will then turn to discuss the third component of the definition: the act of mercy.

---

<sup>67</sup> Anthony Keaty, "The Christian Virtue of Mercy," *Heythrop Journal* 46 (2005): 185.

<sup>68</sup> *ST II-II*, 30, 1. The original Latin phrase from *De Civitate Dei* is "Quid est autem misericordia nisi alienae miseriae quaedam in nostro corde compassio, qua utique si possumus subuenire compellimur?" <http://www.thelatinlibrary.com/augustine/civ9.shtml>

<sup>69</sup> Keaty, "The Christian Virtue of Mercy," 185.

<sup>70</sup> *ST II-II*, 30, 1.

<sup>71</sup> *Ibid.*

## **“Have Mercy on Me”: Those in Need of Mercy**

The first qualification for an act of mercy is that someone must be in distress. Aquinas called this part of mercy “another’s unhappiness.”<sup>72</sup> From the term, “unhappiness” it is clear that Aquinas was referring to a deficiency or lack of happiness. Therefore, to understand unhappiness, it is important to discern what makes people happy. Aquinas believed that happiness is the attainment of your wishes.<sup>73</sup> At first glance, this seems to be a very superficial view of happiness. For example, one could wish for a new car and by receiving or buying that new car, it would render a person happy. While Aquinas believed this was true, he also believed that the car would not keep the person happy for long. In fact, he believed that happiness did not come exclusively from wealth, honours, fame, power, bodily good, or pleasure<sup>74</sup> but from achieving the greatest desires of the will. According to Aquinas, “the object of the will...is the universal good” and the “the universal good...is to be found...in God alone.”<sup>75</sup> Clearly, while receiving temporal wishes makes a man or woman temporally happy, Aquinas was adamant that complete happiness can only come from receiving true and complete good which is found in God. Aquinas knew that “none can attain true and perfect Happiness in this life”<sup>76</sup> because one cannot obtain “perfect and sufficient good [that] excludes every evil, and fulfils every desire”<sup>77</sup> in a world infected by evil and suffering. However, he accounted for the fact that some men can be truly happy because they are hoping to obtain that perfect happiness after death or because they have a “certain participation of Happiness, by reason of a kind of enjoyment of the Sovereign Good.”<sup>78</sup> These people have the extent of happiness that can be achieved in this life

---

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> *ST I-II*, 2.

<sup>75</sup> *ST I-II* 2, 8.

<sup>76</sup> *ST I-II*, 5, 3.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.



and cannot be lost.<sup>79</sup> Therefore those in this state will be happy in the perfect sense though not to the perfect extent.

However, most people are not at the point of having obtained perfect happiness and find temporal happiness in temporal things. While not all temporal things are bad, Aquinas said that we should love the right temporal things with the right amount of love. For example, while loving chocolate is not a bad thing, it should not be loved so much that one eats too much or focuses on it to the extent that one begins to neglect other people. Rightly ordered love is that on which virtue depends.<sup>80</sup> Therefore, if the love is rightly ordered, then both eternal and temporal versions of happiness can be applied to Aquinas' definition. Aquinas said a man wishes for things (either temporal or eternal) in three ways, "first by his natural appetite...secondly a man wishes a thing from deliberate choice: thirdly, a man wishes a thing, not in itself, but in its cause"<sup>81</sup> (by which he means the final goal rather than a momentary decision). Unhappiness or misery results when wishes are not received or when a man suffers what is contrary to what he wishes. First, misery can be a result of "anything contrary to the will's natural appetite."<sup>82</sup> Aquinas said that the natural appetite is that in which "all men wish to be and to live"<sup>83</sup> and consequently anything that threatens man's ability to exist would render him miserable. Sickness, hunger and thirst can all fit into this category because a person needs health, food and water to survive and would suffer or die without them. In addition, things which threaten life such as torture or confinement also fit into this category because they threaten the ability to live and to be. Secondly, Aquinas said that when things happen that are contrary to deliberate choice

---

<sup>79</sup> *ST I-II*, 5, 4.

<sup>80</sup> Michael S. Sherwin, *By Knowledge & Love: Charity and Knowledge in the Moral Theology of St. Thomas Aquinas*, (Washington, D.C.: Catholic University of America Press, 2005), 110.

<sup>81</sup> *ST II-II*, 30, 1.

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

they cause people to be miserable. He (quoting Aristotle) said that “when it is the result of an accident, as when something turns out ill, whereas we hoped well of it.”<sup>84</sup> Finally, Aquinas said that misery is a result of chance when “evil befalls a man who has always striven to do well”<sup>85</sup> such as when a good man you know is diagnosed with cancer or his house burns down due to a lightning storm.

From the description above, it becomes increasingly clear that one must have experienced some very specific circumstances to be considered miserable. None of the miserable conditions described by Aquinas are the result of personal choice. They either happen naturally or by a kind of chance and are the contrary of choices. Faults on the other hand, are acts committed voluntarily and are deliberate actions. Therefore he said that actions that are immoral cause misery and they are not to be pitied but punished.<sup>86</sup> However, Aquinas did not see mercy as a good response and punishment as a mean response but viewed punishment as being a method of educating the person about his or her faults and helping them to correct them. Yet Aquinas also said that “a fault may be...a punishment, through having something connected with it that is against the sinner’s will... [and] in this respect, call for mercy.”<sup>87</sup> In this sense, even a person who deliberately does evil should be pitied in some way because he is “profoundly deluded about the nature of this happiness and is corrupted in his ability to desire the One in whom perfect happiness is found. For this reason, the sinner’s misery can be considered involuntary, and so an object of pity.”<sup>88</sup> To some extent then, everyone needs to be pitied because they are miserable having not achieved their perfect happiness: God.

---

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> Keaty, “The Christian Virtue of Mercy,” 188.

To sum it up, Aquinas believed that there are two types of people who are in need of mercy. The first are those who have been denied their (rightly ordered) desires by something contrary to nature, by an accident or by unexpected evil befalling him. The second are those who act in evil ways deliberately but have not achieved their eternal happiness and are therefore miserable spiritually.

### **“The one who had mercy on him”**

Now that we have satisfied the examination of “another’s unhappiness” it is appropriate to analyze “a man’s compassionate heart.” Mercy is an interesting concept because it is not the suffering or unhappiness that is the central aspect but the compassion of another for the one who is suffering. The earliest definitions of the word “compassion” have a connotation of ‘being together in suffering.’<sup>89</sup> As Judith Barad explains in her article on compassion, “the word “compassion”—*compassio*—comes from two Latin words: “*com*” means “with” and “*pati*” means “suffer.””<sup>90</sup> In order for one to “suffer with” it is clear that there must be a relationship with the person who is suffering. Aquinas was aware of this and said that “from the very fact that a person takes pity on anyone, it follows that another’s distress grieves him. And since sorrow...is about one’s own ills, one grieves or sorrows for another’s distress, in so far as one looks upon another’s distress as one’s own.”<sup>91</sup> To understand who has mercy, it is important to understand what kind of relationships motivate someone to see another’s distress as his own.

---

<sup>89</sup> From Oxford English Dictionary Online. s.v. “Compassion”. Last accessed Feb. 9, 2010.  
<http://dictionary.oed.com>

<sup>90</sup> Judith Barad, “The Understanding and Experience of Compassion: Aquinas and the Dalai Lama” *Buddhist-Christian Studies* 27 (2007): 12.

<sup>91</sup> *ST* II-II, 30, 2.

Aquinas says that there are two types of relationships that compel people to see another's suffering as personal. First of all, the connection can happen through "real union."<sup>92</sup> Real union is in reference to physical proximity. When people close to us suffer, according to Aquinas, we are faced with the reality that similar troubles could happen to us. For example, if a next door neighbour's house burns down because of a fire that was started by a lightning storm, we realize that it just as easily could have been our house that had been hit. These realizations are very likely to inspire pity for our neighbour because we can easily imagine ourselves in the same circumstances and can imagine the same sorrow that we would feel. This imaginative motivation for pity makes up the majority of Aristotle's central argument about pity because he says that "In order to feel pity, we must obviously be capable of supposing that some evil may happen to us or some friend of ours."<sup>93</sup> This is the reason that many charitable organizations use pictures and videos in their fundraising campaigns to portray the poverty, diseases or violence that others suffer. By providing stories and pictures, charities are attempting to move their audience into a pseudo-relationship with the people suffering so that you may pity them and donate money to support their cause. However, many North Americans have difficulty imagining themselves in similar situations and therefore are inspired to change the channel rather than to feel pity and donate money. Undoubtedly, this way of looking at pity has a limited scope because it requires that we only have mercy on people close enough to affect our own persons. Finally, pity is only inspired to the extent that one believes that the person suffering did not deserve it. If someone intentionally sought out evil and ended up suffering, it would be difficult to imagine suffering in the same way if I did not seek out the evil as he did. Evidently, "real union" does not allow for pity on sinners who wilfully choose actions that lead to their harm. Overall, this connection is

---

<sup>92</sup> Ibid.

<sup>93</sup> Aristotle, *Rhetoric*, ed. and trans. by W. Rhys Roberts (London: Macmillan, 1886), II.8.

limited because it requires the suffering to be close enough and suffering in such a way that we can easily imagine suffering in the same way. Most of the people in this world who are suffering would not be included in this connection and therefore this connection would evoke little pity.

However, Aquinas said that in some sense, we should have mercy on those who deliberately do wrong. Therefore, there must be a “higher, or virtuous, disposition and affective response to another’s suffering than that analyzed by Aristotle, namely the response that arises due to a ‘union of affections’.”<sup>94</sup> Aquinas said that in the connection to someone suffering that is formed by a “union of affections”, one person views the person suffering as “another self.”<sup>95</sup> Parents often see children in this way because they are their own offspring and a smaller version of themselves. Therefore when children suffer, parents are more likely to feel the sorrow for the pain rather than just pity their children. In addition to familial relations, Aquinas believed that in intimate friendships, one could regard someone else as another self. While it was relatively clear how parents see children as “other selves” the connection is more difficult to make in friendships. In fact, Aquinas himself did not believe that every kind of friendship resulted in this kind of unity but rather that union of this sort between friends was rare. He said that “union belongs to love in so far as by reason of the complacency of the appetite.”<sup>96</sup> The extent to which and the object towards which one is complacent (or pleased) is the extent of the union of the friendship. In friendships of use and pleasure for example, the lover is pleased and desires an object or pleasure and therefore the union with the friend will only be so far as necessary to obtain the object of desire or pleasure. In virtuous friendships on the other hand, the lover is

---

<sup>94</sup> Keaty, “The Christian Virtue of Mercy,” 191.

<sup>95</sup> *ST II-II*, 30, 2.

<sup>96</sup> *ST I-II*, 26, 2. Although the modern interpretation of the word “complacency” usually refers to the state of being apathetic, the original definition of complacency (that Aquinas would have used) meant “The fact or state of being pleased with a thing or person.” (Oxford English Dictionary Online, s.v. “Complacency.” Last accessed Mar 15, 2010. <http://dictionary.oed.com>).

unified to another person because the beloved himself is the thing towards which the lover is drawn. This does not mean that the two people are equal in status or wealth but rather that they love the good of other person's being.<sup>97</sup> In these types of friendships there is union to such an extent that the lover and beloved are viewed as one being and that when the lover acts for the good of the beloved he sees it as acting for his own good as well. Aquinas says that "when a man loves another with the love of friendship, he wills good to him, just as he wills good to himself: wherefore he apprehends him as his other self, in so far...as he wills good to him as to himself."<sup>98</sup> In addition, a man loves all those who are connected with his friend, out of love for the friend.<sup>99</sup> However, it is not only the good things that the beloved receives that are counted as the lover's own good but also the ill that befalls the beloved that the lover counts as ill towards himself. Not only is it proper for virtuous friends to desire and rejoice in the same things, but they must also sorrow and grieve for each other's distress as well.<sup>100</sup> Therefore, whether good or ill befalls the lover or the beloved, the other counts it as his own. In these types of friendships, Aquinas finds Augustine's quote appropriate: "Well did one say to his friend: Thou half of my soul."<sup>101</sup>

After discussing how "real union" has a limited and narrow means of inspiring pity, my goal was to search for a broader connection that would inspire pity towards more people. However, as a union of affection is an intimate bond in which one "counts his friend's hurt as his own, so that he grieves for his friend's hurt as though he were hurt himself,"<sup>102</sup> it seems that this connection is even more restricted than real union. While you can pity a number of people close to you because you might foresee the evils they suffer as possibly happening to you, the number

---

<sup>97</sup> *ST I-II*, 27, 1.

<sup>98</sup> *ST I-II*, 28, 1.

<sup>99</sup> *ST I-II*, 23, 1.

<sup>100</sup> *ST I-II*, 28, 2.

<sup>101</sup> *ST I-II*, 28, 1.

<sup>102</sup> *ST II-II*, 30, 2.

of relationships in which one could be so intimately united to another must be very limited for two reasons. First, these types of relationships take a great deal of time to build because they require both pursuit and understanding of all the intimate characteristics of the beloved and second because there are rarely people who are entirely virtuous who would even have the state of mind and character to be able to engage in this type of friendship. However, Aquinas does not see “union of affections” in such a narrow view but sees mercy’s scope as “considerably broader.”<sup>103</sup>

To understand how Aquinas would see a ‘union of affections’ as more expansive than the idea listed above, we must return to the concept of friendship. As discussed above, friendships are caused by love of something and a desire to be united with that thing.<sup>104</sup> Love itself is caused by the understanding of something good.<sup>105</sup> Therefore, friendships result because an individual has knowledge of something good, loves the good, desires it and believes that she can obtain the good by forming friendships. The friendships of use, pleasure and virtue as discussed above attempt to obtain some good, but it is imperative to remember that Aquinas did not see any of these things as sufficient to fulfill our desire for good.<sup>106</sup> Rather, Aquinas insisted that “naught can lull man’s will, save the universal good which is found in God.”<sup>107</sup> This was addressed in the discussion of obtaining happiness, but how to ‘obtain God’ was omitted from the discussion. Aquinas said that man can obtain God due to God’s grace offered by Christ. Furthermore, Aquinas believed that the men who accepted Christ and were able to enjoy part of the divine good could even have a friendship with God. “Charity” is the name given to the “friendship of

---

<sup>103</sup> Shawn Floyd, “Aquinas and the Obligations of Mercy,” *Journal of Religious Ethics* 37 (2009): 449.

<sup>104</sup> *ST I-II*, 27-28.

<sup>105</sup> *ST I-II*, 27, 1.

<sup>106</sup> *ST I-II*, 2.

<sup>107</sup> *ST I-II*, 2, 8.

man for God.”<sup>108</sup> In her work on charity, scholar Jean Porter explains that this can occur because “God creates friendship with the justified by so transforming the human soul that it becomes, in some sense, connatural to God... [and therefore] charity can be described as the friendship of men and women for God, because charity itself transforms its subjects into participants in the very mind and will of God.”<sup>109</sup> While this friendship does contain all the aspects of human friendships that result from love of good (such as unity, indwelling and conversation), Aquinas said that this is a special type of friendship because “charity denotes, in addition to love, a certain perfection of love.”<sup>110</sup>

As was stated above, when we love someone we are inclined to love all those who are in connection with our friend. When we love God, we see all those connected with God as worthy of love as well. As God created everyone, friends of God will have a certain love for everyone. As Shawn Floyd says in his paper outlining the obligations of mercy, “Christian doctrine holds that *all* human beings are loved by God and endowed with dignity and worth. For this reason, every person is a neighbour and makes a legitimate claim on our love.”<sup>111</sup> Whereas “natural” friends saw only their friend and others close to their friend as worthy of love, charity goes beyond these limitations and is extended “even to our enemies, whom we love out of charity in relation to God.”<sup>112</sup> If charity can extend even to our enemies, it also means that it transcends borders, families, race, political persuasions and personal ties. From this explanation, it now becomes clear that those who are friends with God can also have a “union of affections” with everyone due to charity and can therefore have mercy even on those who are spiritually

---

<sup>108</sup> *ST* II-II, 23, 1.

<sup>109</sup> Jean Porter, “‘De Ordine Caritatis’: Charity, Friendship, and Justice in Thomas Aquinas’ ‘Summa Theologiae’”, *Thomist, A Speculative Quarterly Review*, 53:2 (1989): 204.

<sup>110</sup> *ST* I-II, 26, 3.

<sup>111</sup> Floyd, “Aquinas and the Obligations of Mercy,” 456.

<sup>112</sup> *ST* II-II, 23, 1.



miserable. To reinforce his point, Aquinas referred to Pope Gregory's statement that "true godliness is not disdainful but compassionate"<sup>113</sup>. However, as charity is an inherently Christian virtue, not all people will be able to love everyone nor have mercy on them. Many will be able to experience pity due to "natural pity" that comes about from real unions or close unions of affections but only Christians will be able to have "charitable pity" or "mercy" on all due to their spiritual state.

To conclude the explanation of who has compassion and towards whom, it is beneficial to sum up Aquinas' argument. For those who have 'natural pity', they will have pity only towards those who are close enough that they can see the possibility of the same evil happening to them or those who are close enough friends that they count the friend's suffering as his own. However, those who find their greatest good in God and therefore love all that God loves are able to see everyone (even enemies) as 'another self' and therefore have 'charitable pity' on all sinners.

### **Acts of Mercy**

Having discussed the merciful and the miserable and explained the circumstances in which an act of mercy may be appropriate, it now remains to look at the act of mercy itself before determining how or if these acts are connected with justice. Up to this point, the terms "mercy" "pity" and "compassion" have been used interchangeably and "mercy" has been used to indicate both a state of mind and an action. To truly understand mercy, the differences between these terms and interpretations must be made clear.

---

<sup>113</sup> *ST* II-II, 30, 1.

Clarifying the terms themselves may be done by looking at the original words and their various interpretations. Aristotle (in the *Rhetoric*) used the term “pity” (*eleos*)<sup>114</sup> to refer to the passion that arose when one felt for a close friend or could envision himself suffering in the same way as someone close to him. From this sense, it becomes clear that ‘pity’ refers to the ‘natural pity’ described above. However, Augustine and Aquinas used the Latin term *miser cordia* which has been translated into a variety of English words. Augustine’s use of the words is often translated to mean “compassion.” As discussed above, compassion means to suffer together with which is clearly an indication that Augustine saw compassion as the higher form of pity in that it is the ‘union of affections’ that takes place when one suffers with another due to their intimacy. Aquinas’ use of the term goes a step beyond Augustine by using the term to mean either “mercy” or “pity”. The editors of the *Summa* included a footnote in their translation of the *Summa Theologica* to distinguish between these two terms. They say that “The one Latin word *miser cordia* signifies either pity or mercy. The distinction between these two is that pity may stand either for the act or for the virtue, whereas mercy stands only for the virtue.”<sup>115</sup>

Therefore, to understand Aquinas’ view of mercy, it is important to clarify the distinction between the act and the virtue. This may seem strange considering that Aquinas saw ‘virtue’ as being made up of consistent actions. It would seem likely that participating or engaging in an act of pity would mean that one had the virtue of mercy. However, Aquinas makes it clear that there can be two motivations for mercy. First, he said that some people are more naturally inclined to the emotion of pity because it is a movement in the “sensitive” appetite.<sup>116</sup> This is the part of the soul that Aquinas describes as containing the emotions and passions. While passions are not

---

<sup>114</sup> Douglas N. Walton, *Appeal to Pity*, (Albany, N.Y.: State University of New York Press, 1997), 50.

<sup>115</sup> “*Summa Theologica*” ed. and trans. by Fathers of the English Dominican Province (Notre Dame, Ave Maria Press, Inc, 1981), 1311.

<sup>116</sup> *ST I-II*, 22, 2.

good or bad in themselves, they can lead to good or bad things. To illustrate this concept, it is useful to return to the example of the charitable organization. For example, if a man is asked by a television campaign to send money to a charitable organization because he has been shown pictures of children are poor and simply acts on the basis of his emotions, two things may result. First, he may participate in some good by giving generously towards those who truly are in need. Mercy is special in this way because even if it is only a result of an emotion, it helps another human being in suffering which is always a good thing.<sup>117</sup> However, if he has just acted on the basis of his emotions for what he has seen and given away his credit information without checking the validity of the organization, he may in fact be helping to fund evil causes that pose as charitable organizations. Clearly, there are some issues with following pity as simply an emotion that wells up in the soul. In her work on compassion, Judith Barad states that “A purely emotional response can cause more harm than good, because it can move us to misapprehend a negative situation or respond to it incorrectly.”<sup>118</sup> In addition, even if you participate in an act of mercy, if it is not done with consistency or reason, it is not a virtue because it is not directing a person towards his good end but rather towards satisfying the desires of the sensitive soul.<sup>119</sup> It seems likely that men who engage in “natural pity” do so from the sensitive appetite rather than through reason because they are compelled to feel pity by the sufferings of those close to them. The term “mercy” cannot always be applied to these people because they are not engaging in acts of pity virtuously but rather by the desires of their emotions. Instead of blind passion, Aquinas said that any passion or emotion of pity must be directed and controlled by reason.

---

<sup>117</sup> *ST* II-II, 30, 3.

<sup>118</sup> Barad, “The Understanding and Experience of Compassion,” 16.

<sup>119</sup> *ST* I-II, 55, 4. For a more lengthy discussion of virtue, see *ST* I-II, Questions 55-69.

If the passions can be checked and directed by reason, Aquinas said that they can make a good act even better.<sup>120</sup> Aquinas believed that reason is superior to the passions and that “it is essential to human virtue that the movements of the soul should be regulated by reason.”<sup>121</sup> This statement certainly applies to the nature of pity as well. Aquinas says that even if a person is able to act on the emotion of pity, it is better if it is regulated by reason. He says that “it is more praiseworthy to do a work of charity from the judgement of reason than from the mere passion of pity”<sup>122</sup> because reason is able to ensure that the passion is directed towards the good. In the example used above, a man might feel pity after seeing videos and pictures of starving children but his reason would incite him to satisfy concerns that the company or organization that he was financially supporting was legitimate, would not abuse his credit card information and would ensure that they money went towards the advertised project or people. With this knowledge, the man would certainly be contributing to the good rather than acting on sheer emotion and unsure of how his sense of pity would affect others. Barad says that one of the main reasons that mercy that comes under the direction of the will is valuable is because it ensures that we find practical solutions to problems rather than impulsive reactions.<sup>123</sup> From this definition, men who have “charitable pity” must certainly be making use of their reason and therefore always acting towards the good when engaging in acts of mercy. The term “mercy” (considered as a virtue) therefore can always be applied to these people.

The virtue of mercy has now been clarified but it remains to explain the act of mercy. To do so, we must turn to Aquinas’ original definition of mercy (taken from Augustine). They agreed that said that mercy is “heartfelt sympathy for another’s distress, impelling us to succour

---

<sup>120</sup> *ST I-II*, 24, 3.

<sup>121</sup> *ST II-II*, 30, 3.

<sup>122</sup> *ST I-II*, 24, 3.

<sup>123</sup> Barad, “The Understanding and Experience of Compassion,” 16.

him if we can.”<sup>124</sup> Previously this paper has dealt with the “heartfelt sympathy for another’s distress” but now we turn to defining and explaining what it means to “succour another” because “for Aquinas, we [do not] feel genuine compassion or mercy if we merely shake our heads over someone’s plight. Compassion moves us to do something about it.”<sup>125</sup> Interestingly, Aristotle did not include this in his definition of pity but rather explained that pity is simply the pain one feels when one sees his friends or relations suffering and either can imagine him suffering the same thing or is so closely united to them that he suffers as well.<sup>126</sup> In no part of his discussion on pity does he say that pity inspires us to actually perform an action. Rather, he spoke of pity as a tool for rhetoricians and invited speakers to appeal to pity to stir the internal passions of their audiences. While passions can lead to external actions, this is not always the case. On the other hand, Augustine’s definition not only implied an internal condition of the one who has mercy but explained that true Christian mercy based on charity requires external actions that are directed towards the one who is miserable. Shawn Floyd states that according to Aquinas, “we do not simply pity our neighbour’s suffering. Rather, we ‘suffer as for our own sores’ precisely because her life is closely intertwined with ours (*ST II-II, Q.30, A.1, ad 2*). On this view, then, charity is naturally evocative of mercy; it generates within us both sorrow and a desire to succour those whose afflictions we share.”<sup>127</sup> In fact, Aquinas went so far as to say that mercy is the highest virtue regarding external acts towards others. Charity is always first because it directs us personally to God, the greatest good, but Aquinas firmly believed that because mercy allows us

---

<sup>124</sup> *ST II-II, 30, 1.*

<sup>125</sup> Barad, “The Understanding and Experience of Compassion,” 12.

<sup>126</sup> Aristotle, *Rhetoric*, II.8.

<sup>127</sup> Floyd, “Aquinas and the Obligations of Mercy,” 455.

to demonstrate charity towards our neighbours it is the “sum total of the Christian religion...as regards external acts.”<sup>128</sup>

So what is the actual act of mercy itself? First of all, we need to look at what it means to “succour” someone. According to early definitions, the word “succour” means to help or aid a person. Aquinas defines the *action* of mercy as that “whereby [the merciful man] supplies the defects of his neighbour”<sup>129</sup> and calls this action the giving of alms. He says that alms are divided into two categories: corporal almsdeeds seek to remedy the temporal miseries of those in need and spiritual alms seek to remedy those in spiritual need. The physical acts of mercy can be performed by anyone even if he does not have the ‘virtue of mercy’. These are “to feed the hungry, to give drink to the thirsty, to clothe the naked, to harbour the harbourless, to visit the sick, to ransom the captive, [and] to bury the dead.”<sup>130</sup> However, in addition to these, there are also seven spiritual needs regarding the eternal part of a man that can only be fulfilled out of charitable love that sees the attainment of God as the greatest good a man can achieve. These actions are to “instruct the ignorant, to counsel the doubtful, to comfort the sorrowful, to reprove the sinner, to forgive injuries, to bear with those who trouble and annoy us and to pray for all.”<sup>131</sup> Although a man may not be able to completely succour these needs on his own, Aquinas said that he should first ask God for help and then give his assistance as much as possible. As spiritual alms last forever and deal with the soul (which is the better part of the man) they are considered higher and more noteworthy than corporeal alms.<sup>132</sup> However, in some specific cases (as when a man’s life is threatened) it is better to satisfy the corporeal needs before the spiritual needs.

---

<sup>128</sup> *ST II-II*, 30, 4.

<sup>129</sup> *Ibid.*

<sup>130</sup> *ST II-II*, 32, 2.

<sup>131</sup> *Ibid.*

<sup>132</sup> *ST II-II*, 30, 3.

Regardless of whether corporeal or spiritual alms are superior, this extensive list of the acts of mercy and may seem daunting if not impossible particularly for those who are merciful due to charitable pity. As stated above, those who love God will love all that he loves and therefore are expected to love all men and have pity on all men who are suffering due to a type of friendship. However, it would be impossible for a single man to succour the needs to all men who are suffering. To address this problem, Aquinas referred to good acts in general and quoted Augustine's treatment of the matter that "since one cannot do good to all, we ought to consider those chiefly who by reason of place, time or any other circumstance, by a kind of chance are more closely united to us."<sup>133</sup> This does not exempt us from doing good works to others if we can and we must always be "prepared in mind to do good to anyone" but only "with a view to their due circumstances"<sup>134</sup> because Aquinas said that we must first be prepared to help those closest to us. As Jean Porter says, "the obligations of beneficence are specified by the requirements of time, place, and circumstance."<sup>135</sup>

In addition to the proximity requirement, Aquinas believed that acts of mercy should be bestowed by one who has more than the person in need because "it belongs to one who is higher and better to supply to defect of another, in so far as the latter is deficient."<sup>136</sup> From this perspective, Aquinas implied that a person can only act upon the inward conditions of mercy in specific cases. For example, a homeless person is not required to give another homeless person a house and a person without patience cannot admonish someone else for not acting patiently. Finally, one must have the power to ease the suffering of the miserable person. In some circumstances, only God is able to ease the suffering of a person and therefore only God will be

---

<sup>133</sup> *ST II-II*, 31, 3.

<sup>134</sup> *ST II-II*, 31, 1.

<sup>135</sup> Porter, "*De Ordine Caritatis*," 206.

<sup>136</sup> *ST II-II*, 30, 4.

able to have mercy. Particularly for spiritual defects, no man is able to reconcile another to God but God alone must have mercy on the individual for reconciliation to occur and to relieve the eternal misery of a man. However, Aquinas believed that even if we could not entirely solve the problems, we can always give something out of charitable mercy because “while compassion [does not] require us to give to the point where we starve or have no shelter over our heads, we can realistically give to others either our time or material goods regardless of our situation in life.”<sup>137</sup>

This concludes the discussion of mercy. Having stated that mercy is “heartfelt sympathy for another’s distress, impelling us to succour him if we can”<sup>138</sup> Aquinas has defined the three parts of mercy. The first is another’s distress which arises from not achieving what makes a man happy. Regarding temporal goods, a man is unhappy when he is denied the things that make him temporally happy but Aquinas said that when a man is not “friends with God” he is eternally unhappy because he is denying himself his greatest good. Regarding the man who has sympathy, what is concluded from Aquinas is that there are two types of *miser cordia*, the first is natural pity whereby we feel sympathy for those close to us in distress and the second is charitable pity whereby through a relationship to God, a man is capable of having pity towards any other human being. From charitable pity, a man is able to have mercy on everyone who is miserable, including sinners who do not have evil thrust upon them but rather choose evil and suffer as a result. Finally, we have learned that there are fourteen acts of mercy that are divided into spiritual and corporeal almsdeeds. By performing these acts, a man does his best to succour those who are suffering temporally or spiritually.

---

<sup>137</sup> Barad, “The Understanding and Experience of Compassion,” 15.

<sup>138</sup> *ST II-II*, 30, 1.



Now that we have come to the end of our discussion of both mercy and justice, it may seem that these two are strictly at odds with one another. Justice means to render to each his due whereas mercy means helping the needy. Is mercy then a subcategory of justice? If this is so, how can mercy be an expression of the highest virtue of charity? In addition, a great deal of the conversation thus far has been in regard to personal interactions and connection involving between individuals acting in mercy or justice. Do these virtues translate into the political world and the community at large or are they only meant to be performed on an individual basis? To answer these questions, we must now turn our attention to understanding the relationship between justice and mercy.

## Chapter 3: Mercy and Justice

*Javert: She spat in your face.*

*Valjean: Then that is my concern.*

*Javert: It is not your concern; it is a matter for justice.*

*Jean Valjean: Inspector Javert, the Highest Justice allows for mercy.*

- From Les Miserables

### The Boat on the Lake

The two previous sections sought to give an explanation of Aquinas' views on justice and mercy as distinct virtues. This final chapter will explore the intertwining relationship of justice and mercy and apply that relationship to the examples mentioned in the introduction. I will argue that there is a place for mercy in the judicial system but it is a very specialized place in which the integrity of the judicial structure can be maintained.

When dealing with complex issues, Aquinas rarely answered questions bluntly by choosing an "a" or "b". Although he did not directly address the question of "Should we, in all circumstances, practice either mercy or justice?" it is unlikely that he would have answered by simply choosing one or the other. Rather, he would have had to explain that this question contains two components: first it is the question of circumstances and secondly the question of superiority of the virtues. For these two virtues, Aquinas believed that justice should be practiced consistently but that mercy is superior. He exhorted his readers to practice justice with a "constant and perpetual will"<sup>139</sup> but said that mercy is the highest virtue regarding external actions because while justice gives someone what he is owed,<sup>140</sup> mercy says we give someone more than his due when he is in distress.<sup>141</sup> In addition, Aquinas explained that mercy must fit

---

<sup>139</sup> ST II-II, 58, 1.

<sup>140</sup> ST II-II, 58, 1.

<sup>141</sup> ST II-II, 30, 1.

within the “order of justice.”<sup>142</sup> Justice, for Aquinas, is the minimal requirement by which we must all act on a consistent basis but mercy is a higher virtue that is better than justice when practiced in appropriate situations by certain individuals towards certain other individuals. Clearly, the question is not a matter of superiority of one virtue over another but rather of appropriateness for the situation. While it is possible that some might critique this answer for being a convoluted way of answering if mercy or justice is superior by saying “it depends”, the relationship between virtues is often confusing and complex and is determined by circumstance. However, further discussion will help to flesh out some of the multifaceted parts of the relationship.

As justice is the minimum required action between people and provides the foundation to work from, mercy builds upon this by acting in a better manner. Justice stays consistent while the aspects of mercy are built on top of justice. Therefore, it is the points at which mercy would affect justice that will determine the relationship between the two. The relationship is reflective of the parts of mercy and how it relates to the wider and broader parts of justice. Like a boat on a lake, it is not so much the size and dimensions of the lake that are of concern but whether the size and type of boat is appropriate for that type of lake. However, the type and size of boat must be appropriate to the lake. It would be inappropriate (and impossible) to place a cruise liner on a puddle and dangerous to place a row boat on the ocean. In the same way, mercy must fit justice. While enjoyment can be had without a boat, the boat allows better and more extensive enjoyment of the lake. Therefore, let us then look at the aspects of the boat of mercy and determine if they are appropriate for being on the lake of justice. The three components of mercy are also the three points of contact with justice. Aquinas said that mercy must be in a specific context, come from a specific type of person and be directed towards a specific type of person. When mercy connects

---

<sup>142</sup> *ST II-II*, 31, 2.

with justice, there are two possible situations. The first is non-legal justice and the other is legal justice. In each of these, the relationship between justice and mercy is slightly different and is performed by different actors. For clarification, the term “mercy” will be used generically throughout this paper, but “forgiveness” will refer to the action of the victim and “clemency” will refer to the action of the sovereign at the state level. To provide further understanding, these terms, concepts, and individuals in both legal and non-legal justice will be examined and explained with examples that will help to solidify Aquinas’ theoretical argument. Examples not only help to explain that rationality is required but are themselves a rational act.

### **Non-Legal Contexts of Mercy and Justice**

Laws are an expression of justice<sup>143</sup> but there are many situations where there are no laws to govern the interactions between people. Even when there are no promulgated human laws, Aquinas believed that justice must be the essential foundation for all human relationships and it must be pursued at “all times and in all cases.”<sup>144</sup> Even between two private individuals, justice is the foundation for a happy and harmonious society because even good actions towards an individual will indirectly but positively affect the whole community because each individual is a part of the whole. Aquinas said that “it is evident that all who are included in a community stand in relation to that community as parts to a whole...so that whatever is the good of a part can be directed to the good of the whole.”<sup>145</sup> The easiest example in this case is that of private but fair exchanges. For example, let us say that a woman owns a car and is looking to sell it. A man meets her and offers to buy the car. The two agree upon an amount and the man pays the woman for the vehicle. This is justice because they both exchanged what the other was owed which is in

---

<sup>143</sup> *ST II-II*, 57, 1.

<sup>144</sup> *ST II-II*, 58, 1.

<sup>145</sup> *ST II-II*, 58, 5.

accordance with the definition of an act of justice: “renders to each one his due.”<sup>146</sup> The man owed the woman her due payment for the car and the woman owed the man the car for his payment. There is a law in Canada stating that the pair must document their interaction through a Bill of Sale but there are no laws governing the type, amount or process of the interaction. Yet if each fulfills their part of the agreement, they have engaged in an act of justice.

This example seems like a straightforward interaction and there is no need for mercy in this situation nor would mercy be appropriate. Clearly, something must change if mercy is to be brought into consideration. Where does mercy fit into non-legal situations? Returning to Aquinas’ definition, we see that mercy is “heartfelt sympathy for another’s distress, impelling us to succour him if we can.”<sup>147</sup> Therefore, one of the individuals must be in distress and the other must be able to help him.

In regard to the person who must be in distress, Aquinas stated that “on the part of the recipient it is requisite that he should be in need.”<sup>148</sup> As explained above, Aquinas said that a man can be in need of help in three ways. First, a man can suffer something “contrary to the will’s natural appetite”, secondly, “something contrary to deliberate choice” or something “entirely contrary to the will, as when evil befalls a man who has always striven to do well.”<sup>149</sup> Overall, each of these requires an accident or what Aquinas calls “evil befalling” someone and are not results of the individual’s direct choice. In the example of the man buying the car from the woman, we will use the character of the man for the person in need of mercy. If he simply did not want to pay the amount, he would not be giving to the woman what she was owed and therefore would be acting unjustly. If he believed the price was unfair he would have to have to

---

<sup>146</sup> *ST II-II*, 58 A1

<sup>147</sup> *ST II-II*, 30, 1.

<sup>148</sup> *ST II-II*, 32, 5.

<sup>149</sup> *ST II-II*, 30, 1.

renegotiate a new agreement with the woman that was fair and did justice to both parties. These are cases for justice rather than mercy. However, let us add to the example that part of the agreement between the man and the woman was that they would meet for the transaction on a certain day at a certain time and if the man did not come, the woman would find someone else to whom she would sell the car. If the man suffered due to one of the causes listed by Aquinas and was not able to keep the appointment, he might be a candidate for mercy. On the first count, if the man suddenly fell ill and could not keep the appointment, he would be in need of mercy from the woman to make another arrangement so that they could meet for the transaction. On the second count, if the man was on his way towards the appointment and was involved in a car accident, he would be in need of mercy from the woman to extend or reschedule the appointment. Finally, if the man had the money for the transaction and then suddenly lost his job, he would be in need of mercy from the woman to give him more time to make the payment. Each of these cases is reflective of a need for mercy because the man has suffered something against his will.

The three accident based sources of suffering are the three primary inspirations of Thomist mercy but he also mentioned that even sinners who deliberately choose evil are to be pitied.<sup>150</sup> Let us add another element to our example. Imagine that the man wishing to buy the car had a problem with gambling and the night before he was to purchase the car, he lost some of the money he was going to use to buy the vehicle. However, he still needed a vehicle in order to get to work and support his family. Aquinas would argue that he should not be pitied for losing what he wanted (the car) but rather that he should be pitied because he is deluded about his true

---

<sup>150</sup> *ST II-II*, 30, 1.

happiness and suffers internally and will suffer eternally by deliberately choosing sinful actions.<sup>151</sup>

From the statements above, you can see that the qualification for a person to be in need of mercy is that he must be in need either physically or spiritually. Now we turn to the second actor in the equation and will determine whether she can or should have mercy on the miserable man for either of the two reasons stated. To understand whether she is capable of doing so we must return to Aquinas' qualifications for those who give mercy. First of all, Aquinas believed that to have mercy on another, "it belongs to one who is higher and better to supply to defect of another, in so far as the latter is deficient."<sup>152</sup> While citizens may not be higher or better than each other, entering into business relationships or exchanges can elevate one individual over another. However, this qualification overall makes it clear that for a person to have mercy, he or she must be able to supply what the miserable person is lacking. In the case of the car, the woman who has the vehicle that the man wants certainly has this characteristic as she is able to supply for what the man is lacking (i.e. the vehicle). If however, she did not own a vehicle and was just a friend, she would not be able to have mercy because she could not supply the man's need in the type or manner that was needed.

Secondly, Aquinas believed that the person giving mercy must feel some sort of connection to the person who in misery. As described above, this is done either by a real union or a union of affections.<sup>153</sup> "Real union" refers to the idea that a person feels close enough to another to envision that the same thing could happen to her.<sup>154</sup> In the example given, this is certainly possible because she is probably easily able to envision similar accidental problems as

---

<sup>151</sup> *ST* II-II, 30, 1.

<sup>152</sup> *ST* II-II, 30, 4.

<sup>153</sup> *ST* II-II, 30, 2.

<sup>154</sup> *ST* II-II, 30, 2.

the three listed above that might prevent her from fulfilling her commitment. These are the cases when someone thinks that “these things can happen to anyone” without warning or intention. A union of affections is the type of relationship in which you are so close to another that you feel his or her pain as your own.<sup>155</sup> This could perhaps be the case if the man she was selling it to was her brother and she felt pity for him due to her relationship with him. Clearly, the woman satisfies each of these cases and could have mercy on the man for each of the three unfortunate evils that befall him. If he fell ill or got in an accident, she certainly has the ability to have mercy on him and give him more time or reschedule the appointment. In the last circumstance of when the man lost his job and couldn’t pay for the car right away, the woman could either extend the time before she sold the car or in an act of generosity sell the car at a lower price. Some would argue that if she sells the car at a lower price than what it is worth, she would be impeding justice because she is not receiving what she is due and the transaction would not satisfy the equality of proportion required by Aquinas. However, Aquinas would have argued that the woman is allowed to view the transaction as an act of liberality rather than justice. He said that “voluntary commutations are when a man voluntarily transfers his chattel to another person. And if he transfer it simply so that the recipient incurs no debt, as in the case of gifts, it is an act, not of justice but of liberality.”<sup>156</sup> If she feels compassion for the man, has an excess of vehicles or money, or does not need the full payment, she may view the reduced rate or gift of the vehicle as act of generosity rather than satisfying her due. In these circumstances it is not difficult to see that while justice certainly is the minimum, an act of mercy is a higher action because it relieves the suffering of another and is higher and better than strict justice. In addition, any woman could be capable of practicing this kind of mercy if she satisfied the requirements for one who gives

---

<sup>155</sup> *ST* II-II, 30, 2.

<sup>156</sup> *ST* II-II, 61, 3.



mercy. However, it must also be noted that she has no obligation to have mercy on the individual. An act of mercy is a relational act and as the state cannot force citizens to engage in specific relationships, it cannot expect its citizens to act in mercy. It can however, expect both individuals to act justly. It is her right to be paid what she is due by the time agreed upon and if he did not complete his part of the agreement, she is free to pursue other offers although it would be more noble for her to have mercy.

Yet there is one problem that remains with this example and with the concept of mercy in general and that is what to do when an individual is suffering due to deliberate choice rather than by accident. Can or should the higher person have mercy on the miserable? If the higher person feels a connection (either by a union of affections or by real union) he or she might be able to relate to the person who is miserable and still have compassion on him. In the example given this is the case where the man who wanted to buy the vehicle had a gambling problem and gambled the money away and yet needed the vehicle to get to work to support his family. If the woman felt a connection to the man by a union of affections she will not likely feel pity for him because it was his own deliberate choice that resulted in this position since she does not make similar choices and therefore would have trouble envisioning the same turmoil happening to her. If however she herself had had a gambling problem she might perhaps be able to envision herself in similar circumstances and have mercy on the man. On the other hand, she may have a real union with the man whereby she was close enough to feel his pain as her own. If perhaps it was her brother or son who had the gambling problem, she would perhaps have compassion on him and give him the car. The other way in which she might have a real union with him is if she saw the man as a brother because of his being a creation of God. In this sense, she could have charitable pity for him (as described in the section on mercy) and would then work to help

supply his deficiency even though he did not deserve it. In the case of non-charitable pity, the woman is not required to have mercy on the man because she deserves justice but if she is a Christian, Aquinas says that she is required to have compassion on the man because “almsgiving is a matter of precept.”<sup>157</sup>

From the argument above, it is possible to have mercy on those who deliberately choose suffering but this does not necessarily mean that they should be given compassion. Although Aquinas stated that Christians are bound to have mercy and perform almsdeeds for their neighbours, he followed the statement by explaining that “almsgiving must be a matter of precept, in so far as it is necessary to virtue, namely, in so far as it is demanded by right reason.”<sup>158</sup> As was stated in the chapter on justice, Aquinas was clear to state that virtues must be motivated by the rational appetite and that virtues must be performed so as to bring good both to the one performing them and to the person receiving the action.<sup>159</sup> Therefore, the person giving mercy must be very careful to ensure that it is done according to reason. Mercy must be an action in accordance with reason so that the person suffering is truly helped rather than just given the tools that allow them to continue in their erroneous ways. Aquinas said that “accordingly we are bound to succour the sinner as to the maintenance of his nature, but no so as to abet his sin.”<sup>160</sup> In the example given, if the woman simply gave the man the car knowing that he had problems with gambling she may in fact be just fuelling his habit and providing him with something else to gamble away. Often people who have a real connection to the miserable person (such as if the woman was the mother or sister of the man) feel sorrow for the miserable person’s need but do not use reason to see that they are just helping to perpetuate the problem by supplying him with

---

<sup>157</sup> *ST II-II*, 32, 5.

<sup>158</sup> *ST II-II*, 32, 5.

<sup>159</sup> *ST II-II*, 58, 3.

<sup>160</sup> *ST II-II*, 31, 2.

temporal goods. Aquinas says that “mercy which is a passion unregulated by reason...impedes the counselling of reason...[and makes] it wander from justice.”<sup>161</sup> The person with charitable pity on the other hand realizes that there are more than just physical needs that must be succoured. If reason dictates that the man would not be helped by being given the car, the person with charitable pity can still try to help his spiritual needs. As stated above, these spiritual acts include her willingness to “counsel, reprove, console, to pardon, forbear, and to pray.”<sup>162</sup> In our case, it might include helping him to overcome his gambling problem rather than supplying him with the car. This is indeed higher because Aquinas said that “the spirit is more excellent than the body”<sup>163</sup> and it is therefore better for her to help his spiritual needs rather than just his physical. However, if the man had no other way of getting to his work, she might also have compassion on him because there are cases when the recipient is so desperately in need of help in order to survive that she ought to help succour his corporeal needs as well.<sup>164</sup> However, if he could take the bus or walk and the car would just be an excess, it might be more rational for the woman to only focus on the spiritual needs of the man.

This rather simple example has done an excellent job of displaying the intricacies of mercy and justice within non legal situations. To summarize, Aquinas said that justice must be the foundation and bare minimum of our interactions with others and most people are not required to go beyond this. However, if some evil unexpectedly befalls a person, another may have mercy on him if it is within her power and it is rational to do so. If however, someone deliberately chose to err, a person who is close to him or someone acting with charitable pity may feel such a connection to the miserable person that he will try to succour his needs

---

<sup>161</sup> *ST II-II*, 31, 3.

<sup>162</sup> *ST II-II*, 32, 2.

<sup>163</sup> *ST II-II*, 32, 3.

<sup>164</sup> *ST II-II*, 32, 4.

regardless of the mistake. However, this must be done rationally, in appropriate circumstances and in an appropriate manner so as to help him in the long term spiritually rather than just satisfy his temporary desires.

## **Legal Situations**

The non legal approach to the relationship between mercy and justice is complex and depends on the person in misery and the person offering mercy. This is true to an even greater extent in the legal context. The purpose of laws is to codify justice and this is done so that everyone may be aware of the expectations and requirements in the community.<sup>165</sup> However, as stated in the section on justice, Aquinas knew that most people would not be very virtuous<sup>166</sup> and therefore could only be held to the minimum standards necessary to keep the peace and protect the innocent rather than the highest standards of going beyond justice. Everyone lives within a community and therefore should act in ways that promote the common good. Therefore, if one breaks the law, one breaks the minimal expectation set. Yet mercy is a virtue that's proper end is the Divine good. Some are not living according to that good and therefore cannot be expected to participate in the virtues that are part of that life. Therefore, the state should expect acts of justice but cannot expect acts of mercy. This does not mean that acts of mercy are in contradiction to justice but means that when there is a grave injustice against the law, acts of mercy become more extreme and therefore must be governed by more specific rules in order that acts of mercy be done in a rational and appropriate manner.

In the non-legal section, we looked at the circumstances themselves and then the active participants that are affected by mercy and justice. To compare and contrast legal justice and non-legal justice, it is important to follow the same steps. Let us first look at the context. As was

---

<sup>165</sup> *ST I-II*, 95, 1.

<sup>166</sup> *ST I-II*, 96, 2.

stated in the chapter on justice, law is “an ordinance of reason for the common good, made by him who has care of the community, and promulgated.”<sup>167</sup> This definition also provides the context in which any act of mercy must fit. The most important part of this is that it regards all actions towards other individuals as actions towards the common group’s standards and ideas. Aquinas said that “since it belongs to the law to direct to the common good...it follows that the justice which is in this way styled general, is called *legal justice*, because thereby man is in harmony with the law which directs the acts of all the virtues to the common good.”<sup>168</sup> Communities, like teams, function properly when they are working towards a common goal rather than individual goals. If however, one member of that team decides to play against the rules of the game, he will likely be penalized and hurt his team and the final goal. In addition, the accomplishments of one person are only noteworthy if they propel the entire team. For this reason, Aquinas said that in “legal justice, it is evident that it stands foremost among all the moral virtues, for as much as the common good transcends the individual good of one person.”<sup>169</sup>

Clearly, the common good was a very important factor for Aquinas when considering justice and mercy. Chapter One looked the consequences of illegal actions that thwarted the common good but it is now time to determine whether mercy can play a part in criminal cases. The example explored in Chapter One was that of murder. Although this is a very complex case for Aquinas, it is important to look at because it is the most serious crime and if mercy can play a role in the outcome of this crime, it follows that it can play a role in the consequences of any crime.

---

<sup>167</sup> *ST I-II*, 90, 1.

<sup>168</sup> *ST II-II*, 58, 5.

<sup>169</sup> *ST II-II*, 58, 12.

To begin, we will address the question of the person in need of mercy, the murderer. In the non-legal example, the Thomist categories of suffering due to accident could logically be applied. We must now question if these categories apply to a murder case. If a person has been convicted of murder it means that he has taken the life of another. Now, if this happened by chance such as the death of another in a car crash due to poor driving conditions, this is not considered murder in the sense of first degree murder because it was not voluntary and Aquinas says that “every sin is voluntary.”<sup>170</sup> However, Aquinas said that murder is the result of the deliberate action. If a person was not in control of her faculties (either due to disease or medication), she is likely not to be considered as responsible as a person who was in their right mind with a will to commit a murder. Aquinas said that “involuntary [injuries] deserve forgiveness”<sup>171</sup> but if a man is “occupying himself with unlawful things which he ought to avoid...[or]...when he does not take sufficient care”<sup>172</sup> and it results in someone else’s death, he is to be held responsible. Let us apply these considerations to the examples mentioned in the introduction. The description of intentional murder relates to the case of Ronald Smith in which he intentionally shot his victims in the head in order to steal their car.<sup>173</sup> The case of Mohammed Kohail may also be considered as intentional because he engaged in the illegal activity of a school yard fight, but it could also be a case of not taking sufficient care because although he may not have meant to kill the other man, his actions resulted in the death of the other man. In either of these instances, neither an accident nor evil befell the men but it was their own choices that resulted in the death of someone else. Clearly, the accidental causes of suffering do not apply to murder cases, although they may certainly apply to other legal cases.

---

<sup>170</sup> *ST II-II*, 64, 8.

<sup>171</sup> *ST II-II*, 68, 4.

<sup>172</sup> *ST II-II*, 64, 8.

<sup>173</sup> CTV, “Dead Man Walking”. Feb 23, 2008.

[http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20080220/wfive\\_deadman\\_080223/20080223?hub=WFive](http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20080220/wfive_deadman_080223/20080223?hub=WFive)

Since the accidental cases of suffering do not apply to murder cases, it seems that there are two ways in that the two men could be seen as suffering or in need of mercy. First, if he realized the error of his ways, he may be suffering internally with guilty for the wrongs he had done. Secondly, if he was not sorry, he will suffer eternally for his actions and therefore, even as one who chose evil, he may still be in need of mercy. Aquinas said that “it is essential to a fault that it be voluntary; and in this respect it deserves punishment rather than mercy. Since, however, fault may be, in a way, a punishment, through having something connected with it that is against the sinner’s will, it may, in this respect, call for mercy.”<sup>174</sup> The victim’s family should be pitied for suffering undeservedly<sup>175</sup> but the murderer should only receive pity because he will suffer eternally or be pitied because he suffers internally with remorse what he has done. In legal justice, it is clear that with the case of murder, a spiritual element becomes central to mercy. As was stated earlier, a judicial system cannot require this element as its proper end is the Divine good rather than the common good. However, Aquinas made it clear that while it cannot be required, there certainly is room for spiritual elements in the judicial system.

If someone who commits a murder and takes another’s life can be pitied we must now ask if he should receive mercy and if so who he should receive it from. Aquinas said that there are two main components of correcting an injustice. The first is that restitution must be made for what was taken. “Restitution re-establishes equality where an unjust taking has caused inequality. Now equality is restored by repaying the exact amount taken.”<sup>176</sup> Murder is a special case because even if the murderer had the desire to reverse his actions, it is impossible to bring back the dead. Aquinas understood that in cases in which the criminal could not repay the debt incurred, the only possibility of respite must come from the person wronged. He said that this is

---

<sup>174</sup> *ST II-II*, 30, 1.

<sup>175</sup> *ST II-II*, 30, 1.

<sup>176</sup> *ST II-II*, 62, 3.

done by asking “the person to whom [s]he owes compensation to grant [her] a remission or a respite.”<sup>177</sup> While the murderer cannot ask the person that was killed for a remission, it may be implied that he owes the debt to the victim’s family and they are the ones to whom he must appeal for a respite. This would require that a person is truly sorry for his actions. If the family agrees and consider the debt incurred as forgiven, then the “equality of proportion” will once again be restored and the restitution will have been fulfilled. This is an absolutely necessary qualification for mercy in the Thomist sense. In the Kohail example, the family of the victim is actually asking for a payment which they would consider as the debt for the life of their son and is in line with Saudi law. The story in the *National Post* explained that the case “could be resolved by a traditional diyah, or blood money, payment to the family of the dead man.”<sup>178</sup> In the Smith case however, at least one of the families of the victims have stated publically that they want Smith executed for his crimes and therefore are not considering forgiveness.<sup>179</sup> For Smith to be granted clemency from the state, Aquinas would say that he would have to make restitution with the people wronged first.

While restitution (or forgiveness) deals with the thing taken from the victim, it does not truly address the reasons why a person would break the law. Aquinas said that “as regards the sin, the remedy is applied by punishment.”<sup>180</sup> Punishment is quite different from restitution as it is not given in order to restore justice but rather to correct the error of the one who broke the law. Aquinas said that “voluntary injury deserves punishment.”<sup>181</sup> In order to correct the mistake, Aquinas believed that the criminal must be punished in a way that makes her feel pain to such an

---

<sup>177</sup> *ST II-II*, 62, 8.

<sup>178</sup> Paul Handley, “Canadian spared execution in Saudi Arabia” *National Post*, January 11, 2010. <http://www.nationalpost.com/related/links/story.html?id=2427552>

<sup>179</sup> CTV, “Dead Man Walking”. [www.ctv.ca](http://www.ctv.ca)

<sup>180</sup> *ST II-II*, 62, 3.

<sup>181</sup> *ST II-II*, 68, 4.



extent that she learns never to make the mistake again. In this way, she will be corrected because “the punishments of this life are medicinal rather than retributive.”<sup>182</sup> However, punishments are not just for the person who committed the crime but for the safeguarding of the community as well. Aquinas said that laws are made “in fear thereof human audacity might be held in check, that innocence might be safeguarded in the midst of wickedness, and that the dread of punishment might prevent the wicked from doing harm.”<sup>183</sup> When a person acts contrary to the law, he or she is defying the community as a whole and needs to be punished for the safeguarding of the community.

As discussed above, those who were directly affected by the harm done might forgive the person (which is required for a clemency decision), but just because the victim or victim’s family forgave the perpetrator or the perpetrator made restitution does not mean that he or she will receive a clemency decision because it was not only those individuals that were wronged. As an act of defiance against the law, an illegal action is an act against the community in general. Therefore, only one who has the authority of the community is able to forgive an action that harmed the community. As explained in the chapter on justice, this power is held by the sovereign. The sovereign is the personality in which all the powers of the community are entrusted and is the “guardian of justice.”<sup>184</sup> Therefore, if the sovereign deems it appropriate and believes that the person who is miserable will no longer be a threat to the common good of the society, he has the power to remit the punishment. Aquinas says that “the sovereign who has full authority in the commonwealth can lawfully remit the punishment to a guilty person, provided

---

<sup>182</sup> *ST II-II*, 66, 6.

<sup>183</sup> *ST I-II*, 95, 1.

<sup>184</sup> *ST II-II*, 58, 1.

the injured party consent to the remission, and that this do not seem detrimental to the public good.”<sup>185</sup>

This remittance of punishment is what is in modern terms called “clemency.” Although Aquinas originally used the term “clemency” to mean gentleness of character - particularly of “leniency of a superior towards an inferior” and a “temperance of spirit” in regards to punishment,<sup>186</sup> the word has come to have a different meaning. Now, it refers to a legal remittance of punishment. Forgiveness is on a personal level and clemency is a state level decision. Yet even though a sovereign has the power to grant clemency, Aquinas warns that not even she has the authority to remit punishments given by God.<sup>187</sup> Yet to have mercy on a person, the sovereign must also fulfill the other requirements for the one who has mercy as discussed above. She clearly has the authority to succour the misery of the person but she must also have a connection with the person. This is the turning point of clemency decision. This does not happen often as it is difficult for a sovereign to envision himself in the same circumstances as many convicted criminals and rarely are his closest friends in such situations so as to need the mercy of the sovereign. Conversely, if a ruler exercises mercy towards his subjects who are in need of it, he may be seen as closer to his subjects and may be considered as a supreme brother rather than a dominant dictator. For this reason, Aquinas quoted Cicero’s comment to Caesar that ““of all thy virtues none is more marvellous or more graceful than thy mercy.””<sup>188</sup> If a ruler has the charitable pity of Aquinas, he will be more loved and respected by his subjects when he gives mercy to those who are in need. Even most modern systems of government still have a mechanism whereby the head of state or ruler has the power to grant clemency. Some might

---

<sup>185</sup> *ST II-II*, 67, 4.

<sup>186</sup> *ST II-II*, 157.

<sup>187</sup> *ST II-II*, 67, 4.

<sup>188</sup> *ST II-II*, 30, 3.

argue that clemency powers are now used to assuage public pressure or to indulge personal whims rather than used to grant pardons due to compassionate charity, real unions, or unions of affection. However, there is still the system in place for both of the modern cases. In media coverage of the Kohail case, the family has made comments that if the beheading sentence is not overturned, they can appeal to King Fahd Bin Abdul Aziz<sup>189</sup> who has the authority to pardon Kohail. In the Smith case, appeals for clemency are being directed towards the Governor of Montana<sup>190</sup> who has the power to pardon.

If the sovereign has some sort of connection with the perpetrator, he may be able to offer mercy but offering “clemency” for a crime is still a vague term and it is important to understand what clemency would look like. A person who committed a murder (or any other crime) may be a candidate for mercy either because he felt remorse for his crime or because he is a sinner and will suffer eternally. There are equally two possible responses that the sovereign can have. In the first case, a sovereign can act to ease the physical suffering of the murderer by changing, reducing or eliminating the sentence already given. Aquinas didn’t believe that having mercy on a criminal simply meant eliminating the consequences altogether (although he didn’t rule that out). Instead, Aquinas opted to use the term *relaxare* which originally meant to loosen or to relax.<sup>191</sup> However, if the sovereign wanted to have mercy on someone (provided that the victim had granted approval) and change or remove the original sentence, the change would have to meet two qualifications. First, it must be in accordance with reason. Aquinas said that any judgement (which presumably includes changes to judgements) must “be pronounced according

---

<sup>189</sup> Max Harrold, “Family appealing Saudi lashing sentence.” *National Post*, April 5, 2008.  
<http://www.nationalpost.com/related/topics/story.html?id=425743>

<sup>190</sup> CTV, “Dead Man Walking” [www.ctv.ca](http://www.ctv.ca)

<sup>191</sup> *ST II-II*, 67, 4. In Latin, the text reads: “Videtur quod iudex licite possit poenam relaxare.” Translation from [http://www.stars21.com/translator/latin\\_to\\_english.html](http://www.stars21.com/translator/latin_to_english.html)

to the right ruling of prudence.”<sup>192</sup> Similarly, any changes to a judgement must not “seem detrimental to the public good.”<sup>193</sup> If the remittance decision meets all of these standards, the sovereign may choose to what extent he will have mercy and reduce or remove a punishment given. On the other hand, if a criminal was not repentant and had no remorse for his actions, he clearly has not learned from his mistake and remains a possible threat to the public good. For the sake of the common good, he should be kept away from the community. Therefore, Aquinas would not have recommended physical acts of mercy towards this person but rather would have recommended that a Christian sovereign perform spiritual acts of mercy in order to succour the misery that the person may undergo eternally. Rather than release or change the punishment, Aquinas would have only recommended that the sovereign “counsel, reprove, console, pardon, forbear and pray”<sup>194</sup> for the soul of this person. In this case, a sovereign could not and should not pardon the offender’s actions because it is his duty to safeguard the security and justice of the community<sup>195</sup> and he should not put that at risk. However, if a sovereign may grant clemency that “obeys the reason...[then] mercy is vouchsafed in such a way that justice is safeguarded, whether we give to the needy or forgive the repentant.”<sup>196</sup>

Before applying the Thomistic qualifications of legal clemency to the case studies presented in the introduction, I want to address a critique of mercy. In Jeffrie Murphy and Jean Hampton’s book *Forgiveness and Mercy*, Murphy believes that “mercy is either a vice or redundant”<sup>197</sup> because it mimics justice’s ability to make restitution and re-balance the scales of the equality of proportion. To refute this argument, let us look at the two participants in the

---

<sup>192</sup> *ST II-II*, 60, 2.

<sup>193</sup> *ST II-II*, 67, 4.

<sup>194</sup> *ST II-II*, 32, 2.

<sup>195</sup> *ST II-II*, 58, 2.

<sup>196</sup> *ST II-II*, 30, 3.

<sup>197</sup> Jeffrie Murphy and Jean Hampton, *Forgiveness and Mercy*, (Cambridge: Cambridge University Press, 1988), 172.

Thomist examples who can give mercy in legal examples. In the case of the victim's family, they are entitled to settling the score by having the murderer punished. This is considered to satisfy the requirements of justice. If they decide to offer forgiveness, they are rebalancing the scales not because they have been repaid the debt but because they have erased the debt owed. While this is restitution, it does not come from a just act but rather from a merciful one. Secondly, the sovereign has a responsibility to guard justice for the community. Justice requires that criminals are punished so that they learn not to act in the same way. Reducing or removing a sentence does not mean that the law was not broken and that the criminal is not guilty but means that the continued punishment of the individual will be lifted or removed. This is more than what the criminal deserves and is therefore above justice. Mercy is not simply another form of justice but is an act higher than justice.

Now that the qualifications for the administration of Thomist legal clemency have been given, it remains to analyze the current case studies presented. First of all, is Kohail in need of mercy? For Aquinas' criminal to be forgiven, it must be presupposed that either the person committed the crime or was indeed found to be guilty. Neither is the case thus far as Kohail is maintaining his innocence although he was found guilty in a Saudi court. If we proceed on the assumption that he is guilty (for theoretical purposes), his first step to receiving a pardon would be to admit his mistake and ask for pardon from the family of the boy killed. If they see fit to offer forgiveness (or accept a diyah), he should then appeal to the King for clemency from the state. If the King finds some connection with Kohail, he may decide to change the penalty originally given. He might reduce execution to prison or release Kohail altogether if he finds that Kohail will no longer be a threat to society. From this example, it seems that Kohail could be a candidate for clemency. On the other hand, the case of Ronald Smith is quite different. First of

all, Smith readily admitted to the crime but has not showed a great deal of remorse over his actions but seems only to regret that his freedom was lost. He has not (as of yet) asked for forgiveness from the families of the men he killed and the families have been asking for justice rather than offering forgiveness.<sup>198</sup> As this first test fails, Smith should not (according to Thomistic terms) be able to receive clemency from the sovereign because restitution has not been made and the equality of justice has not been restored. Although many currently have major problems with the idea of capital punishment, it must be noted that Aquinas was well acquainted with it and promoted it for the protection of society and because he believed that taking the life of a person who took a life is just because it makes restitution.<sup>199</sup> In fact, he said that “if a man be dangerous and infectious to the community, on account of some sin, it is praiseworthy and advantageous that he be killed in order to safeguard the common good, since *a little leaven corrupteth the whole lump*.”<sup>200</sup> However, even if he did not believe in capital punishment personally, he likely would have supported the decision because it followed in line with the laws of the country to which one must conform.

---

<sup>198</sup> CBC News. “Albertan on death row in Montana expects state will end executions.” *CBC News Online*. March 16, 2009. <http://www.cbc.ca/world/story/2009/03/16/us-deathrow.html>

<sup>199</sup> *ST II-II*, 64, 2.

<sup>200</sup> *ST II-II*, 64, 2.

## Conclusion

I now conclude with returning to where I began: the recent change in clemency policy for the Conservative government. While most of the media coverage has focused on capital punishment or state jurisdictions, I sought to explain why clemency should even be an option to a convicted criminal. By looking at the political and social descriptions of Saint Thomas Aquinas, it has been made clear that mercy is indeed an option, even in legal situations. Illegal actions harm not only a specific person, but also threaten the rules and norms of society. Therefore, the person must make restitution or receive forgiveness from the individual wronged so as to balance the scales of justice but should receive punishment to show the community that the laws are necessary and important and must be followed. If the restoration is made or the victim has mercy and sees the crime as forgiven, the balance of justice would be restored on an individual level. However, only the sovereign who is entrusted with the good and safety of the community may bestow clemency on the individual if that person was truly suffering and if the sovereign had a brotherly connection with him. However, the remittance or clemency decision must not threaten the common good and must be in line with reason.

This clarifies what the Thomist prerogative should be within a country but it does not state whether another country should be able to ask for clemency for their citizens. Aquinas stated that “the subjects of one city or kingdom are not bound by the laws of the sovereign of another city or kingdom, since they are not subject to his authority,”<sup>201</sup> which conversely means that if someone becomes under the authority of another, he will be subject to the laws of the sovereign or city. Clearly, if someone commits a crime against the laws of another country in the other country, he is guilty as if he was a citizen. However, it is likely that Aquinas believed in the

---

<sup>201</sup> *ST I-II*, 96, 5.

importance of pursuing diplomatic relations between kings or states and agreed that while one nation may not interfere with another's laws and affairs, they should be able to make requests on behalf of their citizens. However, like the actual sovereign with the power to choose to grant clemency, it is logical that Aquinas would have subjected the sovereign asking for clemency for his citizen to the same qualifications. Therefore, the individual must be in need of mercy and the sovereign must have a connection with him. While the sovereign asking does not have the authority to directly remit the punishment, he does have the authority to ask and therefore this makes him qualify for a request for clemency. However, this should be done rationally, and on a case by case basis. In Thomist terms therefore, the new policy of the Canadian government that they will only seek clemency after they "look at each case"<sup>202</sup> is appropriate and is the prerogative of the sovereign.

While there are a multitude of other issues that could be raised on this point (especially about capital punishment) I have addressed the idea of clemency. There is room for debate over whether Canadian governments should interfere in other jurisdictions that use capital punishment and whether Canada should look at its laws on capital punishment, but those are different discussions for a different thesis. For now, I am content that I have contributed to the discussion by explaining (through the use of Thomas Aquinas' writings) that clemency is indeed a viable option in the judicial structures of modern society.

To conclude, the views of Thomas Aquinas, though complex, offer insight on justice, mercy and the relationship between the two. However, even with the structure set out by Aquinas, there are no easy answers and it remains very important that people use their reason

---

<sup>202</sup> "Fate of Canadians on death row in foreign lands remains murky." *Montreal Gazette*. January 28, 2008. <http://www.canada.com/montrealgazette/news/story.html?id=5d5bbfb6-48c3-419c-b7d8-edf053fbd437>



and intellect to make right and just decisions. In this way, justice will be done, acts of mercy will prevail and the community will flourish.

## Works Cited:

- Aristotle. *Rhetoric*. London : Macmillan, 1886.
- Baglolle, Joel “Repeat-offender rate four times higher than reported.” *Vancouver Sun*, November 6, 2004 [www.proquest.com](http://www.proquest.com)
- Barad, Judith. “The Understanding and Experience of Compassion: Aquinas and the Dalai Lama.” *Buddhist-Christian Studies* 27 (2007): 11-29.
- Canada, “Constitution Act 1867” Part V, § 92.14 <http://laws.justice.gc.ca/en/const/3.html>
- Canada, “Criminal Code of Canada” § 231 (2). <http://laws.justice.gc.ca/eng/C-46/20100121/page-0.html?rp2=HOME&rp3=SI&rp1=first%20degree&rp4=all&rp9=cs&rp10=L&rp13=50#idhit1>
- Canwest News Service, “Canadians support new stand on clemency, poll” January 31, 2008, <http://www.canada.com/topics/news/national/story.html?id=dfc55242-ee80-47b8-a134-867ebe85cd65&k=71463>
- CBC News. “Albertan on death row in Montana expects state will end executions.” *CBC News Online*. March 16, 2009. <http://www.cbc.ca/world/story/2009/03/16/us-deathrow.html>
- CTV, “Dead Man Walking”. Feb 23, 2008. [http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20080220/wfive\\_deadman\\_080223/20080223?hub=WFive](http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20080220/wfive_deadman_080223/20080223?hub=WFive)
- “Fate of Canadians on death row in foreign lands remains murky.” *Montreal Gazette*. January 28, 2008. <http://www.canada.com/montrealgazette/news/story.html?id=5d5bbfb6-48c3-419c-b7d8-edf053fbd437>
- Floyd, Shawn. “Aquinas and the Obligations of Mercy.” *Journal of Religious Ethics* 37 (2009): 449-471.
- Geddes, John “Are we really soft on crime?” *Macleans*, November 9, 2009, <http://www2.macleans.ca/2009/11/09/are-we-really-soft-on-crime/>
- Handley, Paul. “Canadian spared execution in Saudi Arabia” *National Post*, January 11, 2010. <http://www.nationalpost.com/related/links/story.html?id=2427552>
- Harrold, Max. “Family appealing Saudi lashing sentence.” *National Post*, April 5, 2008. <http://www.nationalpost.com/related/topics/story.html?id=425743>

- Keaty, Anthony. "The Christian Virtue of Mercy." *Heythrop Journal* 46 (2005): 181-198.
- Keys, Mary, M. *Aquinas, Aristotle, and the Promise of the Common Good*. Cambridge: Cambridge University Press, 2006.
- Koritansky, Peter. "Chapter 4: Christianity, Punishment, and Natural Law: Thomas Aquinas' Pre-Modern Retributivism" in *The Question of Punishment: Essays in the history of Political Thought*. Edited by Peter Korintansky, Unpublished Manuscript.
- The Latin Library Webpage. Last accessed March 17, 2010.  
<http://www.thelatinlibrary.com/augustine/civ9.shtml>
- Murphy, Jeffrie and Jean Hampton. *Forgiveness and Mercy*. Cambridge: Cambridge University Press, 1988.
- Murphy, Mark C.. "Consent, Custom, and the Common Good in Aquinas's Account of Political Authority," *Review of Politics*, 59 (1997): 323-250.
- New York Times, "Obama: Victory Speech" November 5, 2008.  
<http://elections.nytimes.com/2008/results/president/speeches/obama-victory-speech.html#>
- Oxford English Dictionary Online. Last Accessed March 17, 2010. [www.oed.com](http://www.oed.com)
- Porter, Jean. "De Ordine Caritatis" : Charity, Friendship, and Justice in Thomas Aquinas' "Summa Theologiae." *Thomist, A Speculative Quarterly Review*, 53:2 (1989): 197-213.
- Saint Thomas Aquinas, *Summa Theologiae*, trans. by T. C. O'Brien. New York: Blackfriars, 1964.
- St. Thomas Aquinas. *Summa Theologica*. Translated and edited by Fathers of the English Dominican Province. Notre Dame, Indiana: Christian Classics, Ave Maria Press, 1981.
- Sarat, Austin, and Nassar Hussein, *Forgiveness, Mercy and Clemency*. Stanford: Stanford University Press, 2007.
- Statistics Canada, "Homicides" in *The Daily*, October 23, 2008,  
<http://www.statcan.gc.ca/daily-quotidien/081023/dq081023a-eng.htm>
- Statistics Canada, "Crime Statistics" in *The Daily*, July 17, 2008,  
<http://www.statcan.gc.ca/daily-quotidien/080717/dq080717b-eng.htm>

Statistics Canada, “Adult and youth correctional services: Key indicators” in *The Daily*, December 8, 2009. <http://www.statcan.gc.ca/daily-quotidien/091208/dq091208a-eng.htm>

Walton, Douglas N.. *Appeal to Pity*. Albany, N.Y.: State University of New York Press, 1997.