

FREEDOM AND SATISFACTION

Romanus Cessario, O.P.

Freedom and Punishment! If you had lived in Boston since January 2002, it would be difficult to avoid thinking about punishment. Why? Because those who have received punishments include priests, Bishops, and even the Church herself. Similar scenarios have emerged in other cities throughout the United States as the former ways of treating clerics accused of external unchastity with minors rapidly lost standing in the public eye. There is no need to rehearse the specifics of what has come to be known in the United States as the scandal of clerical sexual abuse. One thing should be noted, however: the story-line, as Mary Ann Glendon likes to observe, has been almost entirely scripted by a secular press that exhibits no manifest sympathy for the Church or her teachings.¹ Unfortunately for many persons, the Church to this day has not succeeded in getting her own story out. Even many good Catholics remain confused. And we all still await a sound analysis of the events that have occurred since a local Boston newspaper first covered the story in its first Sunday edition of 2002.

Take the case of Cardinal Bernard Law; born in Torreón, Mexico, Law is the son of Bernard A., a pioneering aviator, and Helen Stubblefield Law. His early education was mainly acquired in the United States Virgin Islands. As valedictorian of his high school class in Charlotte Amalie, Law reflected early on the importance of Catholic social teaching: "Never must we let bigotry creep into our beings." While an undergraduate at Harvard, Law participated in Catholic intellectual life at St Paul's Church, Cambridge, and concretized his plans to study for the priesthood. He was ordained a Catholic priest in 1961 and began his service to the Church in Vicksburg, Mississippi. As the civil rights movement of the 1960s reached its height, he was

¹ Reuter's news service reported on Friday, October 10, 2003, that Pope John Paul II's top aide said earlier that day that the media had exaggerated the sex scandal that has shaken the U.S. Roman Catholic Church and unfairly tainted thousands of priests with overzealous coverage. "The scandals in the United States received disproportionate attention from the media," Secretary of State Cardinal Angelo Sodano told Reuters in an interview. "There are thieves in every country, but it's hard to say that everyone is a thief."

assigned to take over the diocesan weekly, *The [Jackson] Mississippi Register*. Fortright articles such as "Everyone is Guilty," which appeared a week after the slaying of NAACP leader Medgar Evers, signaled his unequivocal commitment to the cause of racial justice and brought threats to his personal safety.

In 1973, Bernard Law was installed as Bishop in the diocese of Springfield-Cape Girardeau, Missouri. His tenure there was marked by commitment to both ecumenical and inter-religious dialogue, especially with the Missouri Jewish community. His assistance in resettling Vietnamese refugees who were arriving at Fort Chaffee occasioned the beginning of his long-standing involvement with the U.S. Vietnamese community, both Catholic and Buddhist. In 1984, Law was called to assume responsibility for the densely populated archdiocese of Boston, and the following year he received the cardinal's red hat from Pope John Paul II. As Boston's Cardinal, he soon became a leading voice in defense of Catholic teaching on human life, on the dignity of marriage, and on social justice. His strong stands on social issues made him a prime target when a rash of lawsuits brought the glare of publicity to clerical sexual abuse.

Prior to Law's tenure in 1984, public records show that there had been an average of about twenty-seven incidents per year of sexual abuse of minors by Catholic clergymen. For the years 1984 through 1992, the number of incidents dropped to an average of about ten a year. As the sociological ramifications of the problem became apparent, however, Law initiated the expression, "zero tolerance," and for the last two years of his service to Boston, there were no reported incidents. Though Law had followed the same psychiatric advice and had implemented the same protocols that were observed nationwide by both Catholic and other religious and benevolent groups when faced with the sexual abuse of minors committed to their care, the firestorm of criticism that erupted in Boston was especially intense. In 2002, he resigned to give the Church in Boston a chance to heal. On 27 May 2004, Law was named archpriest of the papal basilica of St. Mary Major, one of the oldest churches in Rome. Subsequent investigations reveal that what came to be regarded as the incautious re-assignment of abusive priests at one time represented a carefully monitored program of

hoped-for rehabilitation and that Law, like countless religious leaders and public school superintendents, had acted on what they believed to be the best available medical advice at the time.²

Some persons argue that it will require decades to obtain an objective evaluation of what happened in 2002 and after, and even longer to render an accurate theological interpretation of them. One thing is clear: theological truth has not been well served during this period of reaction to allegations of clerical misconduct. Even the language used to describe the alleged malefactions prompts one to construe them from a secular point of view. Take for example the word “abuse” itself. I should have thought that Catholics would want to be more specific about the kind of vice that a person may commit, and so would prefer to speak about the “unchastity” of certain clerics rather than about “sexual abuse.” The word “abuse” remains open to diverse and even subjective interpretations, signifying a genus while leaving the nature of the moral species undefined.³ Consider as well that the accepted secular therapies to treat victims of sexual abuse differ in significant ways from the sacramental remedies for the sin of unchastity. But it is premature to pursue these kinds of discussions under conditions such as those illustrated by a feature story that ran in an October 2003 daily edition of *The Boston Globe*: “Victims agonize over church deal. Struggle with moral, legal questions about accepting settlement.”⁴

Let me emphasize that it is not my intention to take advantage of this occasion to defend the established prudence that until the provisional approval of the Dallas Charter by the Holy See had governed the handling of unchaste and other priests who fell short of embodying the moral qualities that the exercise of their office requires

² For further information, see *Boston's Cardinal. Bernard Law, the Man and His Witness*, ed. Romanus Cessario, O.P. (Lanham, MD: Lexington, 2002).

³ Just as we do not seek merely generic diagnosis from a physician, likewise we should not rest in merely generic descriptions of concrete moral disturbances and defects. This is especially true when those descriptions are so abstract and vague as to be ideologically and rhetorically manipulable.

⁴ The 8 October 2003 story by Ralph Ranalli appeared on the first page of the “City & Region” section, B1, B6.

of them. I do think, however, that the Church's jurisprudence, which had been developed over centuries, along with the pastoral discretion that accompanied it, merits a second look. Although one may point to specific instances where this classical prudence was poorly implemented for diverse reasons, it still may be argued that the old dispensation succeeded better to uphold the common goods of both Church and polis than the practices now in force. In any event, the past several years have been a difficult period for the Church in our nation.

Most of the reasonable commentary on the unchastity of clerics has included calls for healing. Journalists of all persuasions agree that healing is desirable. Plaintiffs' lawyers argue that they seek prompt healing. Those who are aggrieved beg for healing. Bishops pray for healing. And finally, arbitrators determine the financial cost of procuring healing. In Boston alone, that cost will probably exceed one hundred million dollars. On 16 July 2007, *The New York Times* reported that after the 660 million dollar settlement by the archdiocese of Los Angeles, the sum paid by the Church in the United States has exceeded two billion.⁵

I

Aquinas recognizes the punishment called "damnum," which is one that costs a person his or her wealth.⁶ On the other hand, the clerical sex abuse crisis in the United States has occasioned one of the most significant transfers of funds from the Church to other entities since the sixteenth-century Protestant reform. One hears different ethical evaluations of cash payments made by the Church to compensate those who allegedly have been harmed by clerics. Some persons consider such payments justifiable indemnification for injuries suffered; whereas, others wonder about the rightness of assuming large-scale tort liability in cases that involve allegations of varying degrees of sexual intimacy with plaintiffs who may be as old as seventeen years of

⁵"The Catholic Church in the United States has so far paid more than \$2 billion in settlements and legal judgments to victims of sexual abuse and their families." See http://www.nytimes.com/2007/07/16/us/16abuse.html?_r=1&oref=slogin.

⁶ See *Summa theologiae* IIa-IIae q. 108, art. 3.

age. Still others question a system that enriches by tens of millions of dollars contingent-fee lawyers who pocket one-third or more of everything they recover for their clients.⁷ However one morally evaluates the present adjudication of abuse claims, there emerge other questions that transcend those usually associated with negotiated settlements or court judgments. Among these questions are those that pertain to the doctrine of the two powers – that of the political authority, and that of the Church.

One of the lessons that has been learned since 2002 is that, even in the United States, it is difficult to separate Church from State. One only has to recall the headlines: “Attorney General seeks to screen seminary candidates.” “Judge orders priests’ files handed over to plaintiffs’ lawyers.” “Re-assignment of abusive priests under grand jury scrutiny.” John Courtney Murray, of course, never envisaged this turn of events when he developed his thesis that the First Amendment to the United States *Constitution* ensures the best political arrangement for the Church to carry on her specific work.⁸ To quote loosely one American cardinal, “We have lost a lot of freedom.” Because they fear liability risks, Bishops, for example, are not free to assign even those clerics who have repented sincerely of isolated sins committed many decades ago.

This turn of events should not have come as a surprise to the careful observer of the evolving position of the Catholic Church in the American experiment.⁹ One of the problems that Catholics face and

⁷ The argument for allowing lawyers to work on a contingent-fee basis appeals to equity; the practice, it is said, enables those without the funds to hire a lawyer to pursue their claims against entities that would respond only to civil suit. European countries, fearing that it would multiply litigation, generally do not allow the practice. I am not aware of any studies that examine the ethics of the practice when used against the Church.

⁸ It is noteworthy that Europeans find it very difficult to grasp why the Church as a corporate entity, incorporated for example as a diocese or a religious province, should be held responsible for the actions of one of her ministers.

⁹ I originally made this point at the 2003 Dallas National Catholic Bioethics Center workshop for Bishops, where I acknowledged the invaluable assistance of Professor Mary Ann Glendon in composing the following three

that has left Catholics in the United States less well-protected than the non-hierarchical churches that stem from sixteenth-century reform movements, is the uneven way that the provisions for free-exercise and non-establishment of religion as guaranteed by the First Amendment have been developed by the Supreme Court and within the public consciousness of our nation. In short, Americans are more attuned to recognize the privileges that free-exercise brings than those that attach to non-establishment. That the concerns of non-Catholic churches have dominated interpretive legal developments surrounding the First Amendment may help to explain this circumstance.

Discussion of First Amendment privileges of course belongs to specialists.¹⁰ It seems, however, that the emphasis on free exercise by individuals has neglected or put at risk the associational rights of members of religions like the Catholic one where free exercise by individuals is inextricably related to the freedom of their religious institutions to govern themselves. The framers of the Constitution understood this well, but a narrow view of free exercise was introduced by the Supreme Court in the 1940s. At the same time, the situation for Catholics was worsened by the Court's extremely expansive interpretation of the establishment language to strike down almost every form of public assistance to religious institutions. Again, this has had a disparate impact on the Catholic Church which, more than others, has supplied health care and education and poverty relief to members of the polity. The Supreme Court's message to Catholic institutions engaged in this sort of work has been in effect: "Strip yourself of all religious insignia and don't express your religion if you want any help from the state - shut up and do the work!"

paragraphs that discuss the Church's present liability in the American republic. See my "Cooperation, *Veritatis splendor*, and the Luminous Mysteries," in *Walk as Children of Light: The Challenge of Cooperation in a Pluralistic Society: Proceedings of the Nineteenth Workshop for Bishops*, Dallas, Texas, ed. Edward J. Furton (Boston, Massachusetts: The National Catholic Bioethics Center, 2003): 47-67.

¹⁰ For instance, Philip Hamburger takes up the question in his *Separation of Church and State* (Cambridge, Mass.: Harvard University Press, 2003).

Though there are some signs that the legal situation is improving, we are not in as good a position as we should be to take full advantage of the provision of the Constitution that was meant to protect free exercise within institutions as well as by individuals alone. It is reasonable to inquire to what extent this lacuna has affected the Church's ability to respond to the challenges occasioned by the unchastity of certain clerics. Let me propose at this juncture, without entertaining further considerations, that the full implications of free exercise have not been discussed in the appropriate disciplines, which are not exclusively theological (perhaps they have not been even sufficiently envisaged), and let me propose as well that this deficiency has left the Catholic people with a truncated comprehension of how to protect Catholic institutions, including the hierarchical structure of the Church herself.

Indeed, Catholics have become so accustomed to look at Catholic life and institutions as parts of a larger, generally Catholic-friendly environment that many Catholics are willing to give changing public sentiments the benefit of the doubt. These Catholics too easily transfer the optimism of the "supernatural existential" to American society as a whole. This illusion that the Church in the United States was still able to assume, let alone rely on, the antecedent goodwill of the American public or, for that matter, of the Catholic population, was shattered brutally in the January 6, 2002, edition of *The Boston Globe*. The paper's front-page exposé on how the Church had dealt with unchaste clerics gave Boston Catholics the chance to demonstrate that they were no longer ready to make accommodations for the failures, albeit shameful ones, of the clergy, even though they were still expected to recognize in these men God's anointed ones and in the Bishops who supervised them the guarantee of true religion. Subsequent events and discourse confirm that the character of Holy Orders and the grace of episcopal "governance" number among the chief casualties of Catholic doctrine that have resulted from what in the United States we now call "The Crisis in the Church."¹¹

¹¹ The Post-Synodal Apostolic Exhortation, *Pastores gregis* (October 16, 2003) of Pope John Paul II explains this grace: "The Bishop, by virtue of the office that he has received, is thus invested with an objective juridical power meant to

In late summer of 2003, the punishment of priests in Boston reached a certain tragic denouement. John Geoghen, one of the men charged with long-term sexual misconduct toward pre-pubescent children, was brutally murdered while being held in a maximum security cell as he awaited his appeal on a decade-old charge of improperly touching a young boy in a Boston-area public swimming pool. There exists a general agreement among sympathetic observers that the guilty verdict and the sentence of some ten years that he originally received support the view that the public administration of justice does not work evenly in the midst of an adverse political environment.

There is another consideration that merits our reflection. It is commonly accepted that child molesters, as the Miguel Piñero drama *Short Eyes* vividly portrays, do not fare well in prison.¹² Priest child molesters fare less well. The reason turns on the exercise of spiritual authority that priests enjoy in the communion of the Church. When they have been sentenced to prison terms, policemen, judges, political figures, and others who have exercised authority in civil society customarily find themselves detained in special prisons. Those who administer civil justice understand that public figures require protection in jail in order to avoid suffering reprisals from other prisoners who may recognize in these persons representatives of the civil authority that is responsible for their own incarceration or that upholds a public order that malefactors find inconvenient. The same potential for resentment also develops when those who have exercised spiritual authority and have upheld an ecclesial order face

be expressed in authoritative acts whereby he carries out the ministry of governance (*munus pastorale*) received in the sacrament" (no. 43).

¹² The play *Short Eyes* by Miguel Piñero takes place in the day room of a House of Detention. The cast of actors are mostly made up of Blacks, Puerto Ricans and a few Whites. They are young convicts. An accused child molester is brought into the cellblock. He is called a degenerate by a guard. A child molester (or in prison slang a "short eyes") is considered the most despicable of people. Mr. Piñero, while serving a five year sentence for armed robbery in Sing Sing Prison, started writing the play. Marvin Felix Camillo read some of Miguel's work and asked him to sign up in his drama workshop in the prison. In the early 70s, Joseph Papp produced the play *Short Eyes* at the Lincoln Center in New York City.

incarceration. But no special provisions exist to accommodate priest-prisoners. The historical solution for this problem includes their confinement in an ecclesiastical prison. The 1917 Code of Canon Law (CIC 120) still recognized the ancient *privilegium fori*, which required that ecclesiastical courts judge clerics in all contentious or criminal cases; for those found guilty, special confinement, usually in a monastery, was arranged. The Church for centuries maintained this privilege because, among other reasons, experience had shown that many laymen were inclined to oppress the clergy.¹³

The study of the historical evolution and present status of the *privilegium fori*, one of four clerical privileges once recognized in universal law by the Church, falls under the competency of professional jurists and canonists.¹⁴ While these privileges have been eliminated in the Code of 1983, the rationale for the *privilegium fori*, which dates from at least the fifth century, merits some fresh consideration in light of the mistreatment of clerics that continues to make headlines even in the secular press.¹⁵ One historical motivation for such reconsideration may be found in Martin Luther, who in order to assail the public identity of the Church, complained deeply about the *privilegium fori* in his 1520 "An Open Letter to The Christian Nobility of the German Nation Concerning the Reform of the Christian Estate."¹⁶ I recognize, of

¹³ Johannes Baptist Sägmüller has observed: "This [privilege] secures the clergy a special tribunal in civil and criminal causes before an ecclesiastical judge. The civil causes of clerics pertain by nature to the secular courts as much as to those of the laity. But the thought that it was unseemly that the fathers and teachers of the faithful should be brought before laymen as judges, and also the experience that many laymen were greatly inclined to oppress the clergy (c. 3 in Vito de immun., III, 23), led the Church to withdraw her servants even in civil matters from the secular courts, and to bring them entirely under her own jurisdiction." See *The Catholic Encyclopedia*, 1911 ed., s.v. "privileges," vol. VII, p. 438.

¹⁴ For a brief commentary, see John E. Lynch, C.S.P., *Canon Law Society of America Commentary* (1985): 199, who also discusses the *privilegium canonis*, the *privilegium immunitatis*, and the *privilegium competentis*.

¹⁵ Theodosian Code 16, 2, 41.

¹⁶ "An Open Letter to The Christian Nobility of the German Nation Concerning the Reform of the Christian Estate," by Martin Luther (1520), introduction

course, that special juridical treatment for clerics would be difficult to justify under our constitutional form of government, unless a concordat between the United States and the Holy See would provide otherwise,¹⁷ which is an unlikely prospect in the immediate political future of our country. At the same time, to recall the *privilegium fori* serves to remind us that safeguarding the public identity of the Church, and therefore the true freedom of the Catholic religion and her adherents, is something that requires provisions that cannot be taken for granted within the American democracy.

and translation by C. M. Jacobs, *Works of Martin Luther: With Introductions and Notes*, Volume II (Philadelphia: A. J. Holman Company, 1915): "See, now, how Christian is the decree which says that the temporal power is not above the 'spiritual estate' and may not punish it. That is as much as to say that the hand shall lend no aid when the eye is suffering. Is it not unnatural, not to say unchristian, that one member should not help another and prevent its destruction? Verily, the more honorable the member, the more should the others help. I say then, since the temporal power is ordained of God to punish evil-doers and to protect them that do well, it should therefore be left free to perform its office without hindrance through the whole body of Christendom without respect of persons, whether it affect pope, bishops, priests, monks, nuns or anybody else. For if the mere fact that the temporal power has a smaller place among the Christian offices than has the office of preachers or confessors, or of the clergy, then the tailors, cobblers, masons, carpenters, pot-boys, tapsters, farmers, and all the secular tradesmen, should also be prevented from providing pope, bishops, priests and monks with shoes, clothing, houses, meat and drink, and from paying them tribute. But if these laymen are allowed to do their work unhindered, what do the Roman scribes mean by their laws, with which they withdraw themselves from the jurisdiction of the temporal Christian power, only so that they may be free to do evil and to fulfill what St. Peter has said: 'There shall be false teachers among you, and through covetousness shall they with feigned words make merchandise of you' (2 Peter 2:1)."

¹⁷ Lynch, *Commentary*, observes that "for the most part the special treatment of clerics has had little application in recent times, though some concordats did arrange for the imprisonment of convicted clerics in a monastery" (199). The United States, however, did honor the *privilegium immunitatis*, which "claimed that clerics were exempt from military service and from those duties and public civil offices alien to the clerical state" (ibid.).

II

In his 1975 study, *Surveiller et Punir: Naissance de la prison*, Michel Foucault, points out that “a convicted criminal could become after his death a sort of saint, his memory honored and his grave respected.”¹⁸ He goes on to recount the case of a certain Tanguy, who was executed in Brittany about 1740, and who had begun, before his conviction, a long satisfaction ordered by his confessor. “Was this,” asks Foucault, “a conflict between civil justice and religious penitence?”¹⁹ Let Foucault’s question serve as a transition to the theme of Christian satisfaction, which discussion requires, however, that we first consider the virtue of vengeance.

In his treatise on justice, which occupies questions 57-122 of the *secunda-secundae*, Saint Thomas Aquinas includes a discussion of the virtue of vengeance (in Latin, *vindicatio*). Although some, if not most, people would find it difficult to think of vengeance as a virtue,²⁰ for Aquinas this virtue falls among those joined (*adjunguntur*²¹) to justice because, while people “lack the fullness of justice by reason of the debt rendered,” they still render what is morally due as this obligation arises from the demands of a virtuous life.²² We discover that Aquinas considers two grounds upon which to establish the debt of justice. “The distinction between legal debt and moral debt,” writes T. C. O’Brien, “is prominent in 2a2ae, 80-118. The meaning of legal debt remains constant, a debt determined by positive law or private contract to the acquittal of which the debtor is bound by law.”²³ The meaning of moral

¹⁸ Michel Foucault, *Discipline & Punish. The Birth of the Prison*, trans. Alana Sheriden (New York: Vintage Books, 1995), p. 67.

¹⁹ Foucault, *Discipline*, p. 67, who found the case in A. Corre, *Documents pour servir à l’histoire de la torture judiciaire en Bretagne*, 1896.

²⁰ I am grateful to Jesuit Father John McIntyre of Boston College for having read an earlier version of this paper and for supplying helpful criticisms.

²¹ *Summa theologiae*, IIa-IIae q. 80, art. 1: “Dicendum quod in virtutibus quae adjunguntur alicui principali virtuti. . . .”

²² IIa-IIae, q. 80, art. 1.

²³ Blackfriars edition of the *Summa theologiae*, vol. 41, *Virtues of Justice in the Human Community*, ed. T.C. O’Brien (1972), Appendix I, “Legal Debt, Moral

debt, as O'Brien goes on to explain, contains variations based on the way that Aquinas interprets texts from Aristotle's *Nicomachean Ethics*. One differentiation, however, remains central to distinguishing the virtue of vengeance from the restitution that constitutes the act of commutative justice. It occurs in reply to a question that is raised in the first argument of question 80, the question where Aquinas treats the potential parts of justice, *de partibus potentialibus justitiae*. Vengeance, it is alleged, "seems to pertain to commutative justice, since it is the virtue which seeks to compensate injuries."²⁴ In replying to this assumption, Aquinas makes the following distinction: "Vengeance in so far as it is an act of public authority involving a judge's sentence, is an act of commutative justice; the vindication, however, which a man takes on his own initiative and in accord with the law, or which he seeks to obtain from a judge, is an act of a virtue annexed to justice."²⁵ This means that to determine the virtuous mean of vengeance, a person committed to virtue is required to evaluate a very particular instance of "moral debt," one that concerns redressing wrongs.

The four articles that comprise *Summa theologiae* IIa-IIae q. 108, which is about vengeance, explain in succession: (1) That the virtue of vengeance does not cover-up hateful retaliation, but rather aims to accomplish a good both by correcting or at least restraining a wrongdoer, or by relieving others from further harm that he may cause, and by maintaining a just order and by doing honor to God; (2) that this virtue is a specific one since it matches up to a distinct natural inclination (*inclinacionem naturalem determinatam*) to get rid of what is harmful; (3) that the virtuously vengeful person may employ means suitable to persuade those who do not love virtue for virtue's sake but still may fear receiving the punishment due to the non-virtuous; and (4) that vengeance, while principally restorative, since it inflicts a

Debt," p. 316. This essay provides the basic distinctions necessary to understand Aquinas's organization of the potential parts of justice, the virtues of truth, gratitude, vengeance, liberality, and friendliness. The reference to q. 118, which excludes prodigality (q. 119), the excess vice of liberality, is probably a typographical error.

²⁴ *Summa theologiae* IIa-IIae q. 80, obj. 1.

²⁵ Question 80, art. unic., ad 1um.

punishment and so restores the balance of justice, may also accomplish preventive or medicinal objectives. Even the good, Aquinas observes, can suffer the loss of temporal goods, and this loss providentially works toward their betterment in virtue.

Question 108 supplies an overture to a Christian view of punishment. Aquinas's discussion of vengeance begins by envisaging a specific virtue of the Christian life, which like gratitude measures the repayment of deeds done by other persons: gratitude with the good done to us; vengeance with the evil. The discussion of vengeance, however, ends by airing general considerations that today some would place under the heading of theodicy, or consider as answers to the question, "Why bad things happen to good people?" Aquinas supplies the principle that governs the only valid Christian response to this question: "Since spiritual goods are of supreme importance, while the temporal are of slight moment, a person who is sinless at times suffers the loss of earthly goods; this is the meaning of the many hardships of life inflicted by God to humble and test us."²⁶ (Is he thinking of Christ as the prototype of one who is sinless?) To return to vengeance itself, we discover that this virtue represents a good quality in a man who, in light of all relevant circumstances, observes a due measure in redressing wrongs.²⁷

Like every virtue, vengeance possesses its contraries. The vices opposed to vengeance are two; one exceeds the due measure by excess, whereas the other falls short of the due measure by defect. Aquinas suggests no name for the vice of those who fail altogether to inflict punishment. He may have judged it to be a less serious fault than the excess vice which is called cruelty or the sin of *saevitiae* – ferocity, or he may have had in mind the Catholic practice of granting indulgences. Indulgences benefit those to whom punishment is due, but who are spared enduring some or all of what is prescribed because of a recognized sacramental association with Christ's redemption.²⁸ This

²⁶ *Summa theologiae* IIa-IIae q. 108, art. 4.

²⁷ *Summa theologiae* IIa-IIae q. 108, art. 2, ad 3um.

²⁸ Indulgences rely on what is called the *thesaurus ecclesiae*, the deposit of good works that the saints have accumulated on account of their union with

latter explanation gains a certain plausibility when one notes that the only text of Scripture that Aquinas adduces in support of the nameless vice of defect with respect to vengeance is Proverbs 13: 24: "He who spareth the rod hateth his son." (*Qui parcit virgae, odit filium suum.*) This sapiential axiom, of course, envisages child rearing.

We are brought to conclude that the virtue of vengeance is required to moderate the natural inclination to eliminate what we consider harmful to ourselves and to those whom we love so that this inclination does not develop into the vicious quality of cruelty. That what today we would call emotion plays a part in this moderation is made clear when Aquinas, in *secunda-secundae* q. 159, discusses cruelty not as a sin against the virtues allied to justice but against a virtue allied to temperance, namely, clemency. We find ourselves deeply immersed in the rich moral psychology that Aquinas develops when he holds the *Nicomachean Ethics* in one hand and the Bible in the other.

Let's return to Boston. It would be difficult to gainsay that John Geoghen did not himself become a victim of a cruelty that expresses the excess of virtuous vengeance. In July 2007, a Boston newspaper reported having received in 2005 a macabre video in which Joseph Druce, the convicted murderer of John Geoghan, re-enacted choking the priest with a pair of gym socks, using Geoghan's own sneaker as a tourniquet to tighten the noose. Then, according to the video, Druce climbed on top of his cell cot and jumped off repeatedly, showing how he crushed the priest's frail body. Again in 2007, a video appeared on the Internet which purported to expose "The truth about officers allowing J.G. to die through their neglect." More than 9,000 persons are reported to have accessed this video. Some left comments, including this one: "One less irredeemable monster on the planet. Good work Mister Druce!"²⁹

Christ . For further information, see my "St. Thomas Aquinas on Satisfaction Indulgences, and Crusades," *Medieval Philosophy & Theology* 2 (1992): 74-96.

²⁹ See relevant stories in the *Boston Herald* for 6, 7 & 9 July 2007, respectively, "Security video from Geoghan slay hits Web," "Prison slay video remains online: Union says exposure poses risk for guards," and "New prison video posted under priest killer's name."

III

No Christian theologian who considers justice and the virtues related to it should fail to remember that Christ himself has fulfilled all justice.³⁰ "If God is for us, who is against us? He who did not spare his own Son but gave him up for us all, will he not also give us all things with him?" (Rom 8:31, 32). Some theologians, however, have questioned whether vindictive justice can serve as an instrument to accomplish the holy will of God. Notwithstanding, Aquinas upholds the well-known insight of Saint Anselm's *Cur Deus homo?* though he offers a radically different account of satisfaction than does the Archbishop of Canterbury.³¹ The Common Doctor achieves his new interpretation of satisfaction, in short, by appealing to the nature of Christ's priesthood and of his priestly sacrifice on Golgotha.

The tradition that we identify with Saint Anselm accepts that an act of human justice could not satisfy by itself for the offense caused by the sin of the human race. Christ alone embodies the perfectly just man, and so he alone is capable of offering the sacrifice that fulfills what is due to God. In offering his own sacrifice of worship on the Cross, Christ fully propitiates the divine justice and once again inaugurates the reign of divine glory in the world. The tradition calls this work of the God-man satisfaction.

Aquinas enlarges on the theme that satisfactory punishments do honor to God and perfect the spiritual well-being of believers who voluntarily accept punishment as salvific. In other words, he defines

³⁰ For instance, see *Summa theologiae* IIIa q. 46, art. 1, ad 3um: "...hominem liberari per passionem Christi conveniens fuit et misericordiae et justitiae ejus. Justitiae quidem, quia per passionem suam Christus satisfecit pro peccato humani generis; et ita homo per justitiam Christi liberatus est." "The liberation of man through the passion of Christ was consonant with both his mercy and his justice. With justice, because by his passion Christ made satisfaction for the sin of the human race, and man was freed through the justice of Christ" (Blackfriars edition of the *Summa theologiae*, vol. 54, *The Passion of Christ*, ed. Richard T.A. Murphy, O.P., p. 7).

³¹ For further discussion, see my *The Godly Image: Christ and Salvation in Catholic Thought from Anselm to Aquinas*, Studies in Historical Theology VI (Petersham, MA: St Bede's Publications, 1990).

satisfaction in terms of self-appropriation. That is, to the extent that the culpable party has achieved a certain freedom, he realizes it by way of self-appropriation of the values involved in satisfaction.³² The mystery, of course, is that Christ takes on himself the sin of the human race while he himself remains sinless. All other members of the human race discover freedom through their participation in his "superabundant satisfaction,"³³ that is, by uniting themselves to the sacrifice of the race realized in the Golgotha-event.

Christian satisfaction, as the aforementioned example of Tanguy illustrates, can inform the lives even of Christian malefactors or criminals. The Church today still recognizes penalties or sanctions (Book VI in the current Code).³⁴ Fundamentally, they are of two kinds: one is medicinal (for the reform of the individual) and the other is expiatory (for repairing the public good). Penalties supply various means of achieving equilibrium: they keep things in balance or get things right. As we have observed, however, the natural inclination to redress wrongdoing can lead to excessive vindication by enacting a measure of retaliatory punishment that would qualify as a cruelty.³⁵ Clemency always becomes the Christian. To think about punishment only in terms of penalties, even medicinal ones, is to overlook the truth that in the Christian Church satisfaction enjoys a preeminent role in restoring justice.

³² As theology professors like to say, by becoming more of what we already are by grace, the human person finds his perfection. The essentialist noun "satisfaction" really works in the Christian scheme of things as an existentialist verb. That is, satisfaction points less to a price to be paid than to a work to be embraced.

³³ See *Summa theologiae* IIIa q. 48. art. 2: "superabundans satisfactio."

³⁴ For recent discussion on how the Church imposes penalties, see *Il processo penale canonico*, ed. Zbigniew Suchecki (Rome: Lateran University Press, 2003).

³⁵ In an address of September 8, 2003, in Dublin, then Archbishop Renato Martino, president of the Pontifical Council for Justice and Peace, reported that the Holy See considers the goal of prisons to be the rehabilitation of inmates. His views, which emphasized "the absolute respect for the dignity of the person sentenced and his rehabilitation in society," were directed to those who bear the responsibility for staffing prisons, and may be interpreted to address the proclivity for institutionalized cruelty in prisons.

If we take seriously the satisfactorial transformation of punishment, then in the Christian commonwealth punishment meted out to the malefactor should appear in a new light. Saint Thomas considers that even an innocent person can transform punishment into something meritorious by voluntarily accepting the penalty as a work of satisfaction. "Punishment pure and simple," he writes, "is not the desert of the virtuous man; still it is possible that punishment as expiatory be exacted of him. To make due satisfaction for offences either to God or to man is itself matter for virtue."³⁶ How much the more, then, is this true for one who deserves punishment. The Church, in fact, still encourages priests to pray after imparting sacramental absolution: "[M]ay. . . whatever good you do or evil you endure be cause for the remission of your sins. . . ." This liturgical prayer, known to Aquinas himself, sacramentalizes everything that is burdensome, that runs against the grain, even the vengeance that may befall those whose offense is involuntary (as explained in *Summa theologiae* IIa-IIae q. 108, art. 4).³⁷

More than others in the past, Pope John Paul II has emphasized that virtue and freedom are correlatives. Since virtue enables one to possess the truth about the human good, it also ensures that a person enjoys the gift of true freedom, which is identified with the possession of charity. The one who loves the most, is the one who is most free, which is why the Pope insists that Christ on the Cross reveals the authentic meaning of freedom.³⁸

³⁶ *Summa theologiae* Ia-IIae q. 87, art. 6, ad 2um. This article and the commentary supplied by T. C. O'Brien in vol. 27 of the Blackfriars edition of the *Summa theologiae* explains how "the notion of punishment is modified to include satisfaction because of Christ's redemptive Passion and the consequences of this on the Christian life."

³⁷ See my discussion of this prayer in *Godly Image*, pp. 107-108.

³⁸ For example, consider what is emphasized in *Veritatis splendor*, no. 85: "The Crucified Christ reveals the authentic meaning of freedom; he lives it fully in the total gift of himself and calls his disciples to share in his freedom." Compare this description of freedom with what Aquinas says in *Summa theologiae* IIIa q. 48, art. 2: "Christus autem ex charitate et obedientia patiundo majus aliquid Deo exhibuit quam exigeret recompensatio totius

To bring these remarks to a conclusion, I will draw together some observations: (1) Those who, in any forum, require or administer punishments that offend against the dignity of the human person fall short of living out virtuous vengeance. (2) Vengeance, as the example of John Geoghen's prison murder illustrates, can easily give way to the correlative vice of cruelty or ferocity. (3) The Christian Church witnesses to the mystery of Christ's expiation for the sins of the world and to the marvelous transformation of punishment that his satisfaction makes available to all. (4) In those persons liable to the punishment of original sin, promoting authentic freedom requires that all forms of punishment be taken up into the mystery of Christ's satisfaction. (5) In other words, there should exist, contrary to what Foucault may have thought, no conflict between civil justice and religious penitence.

When this view of satisfaction comes to inform how every believer regards the punishment of wrongdoers, we may be in a position to garner the real lessons for which divine providence has permitted the present "Crisis" to befall the Church in the United States. It is possible to anticipate at least one such lesson from the *Catechism of the Catholic Church*. In the commentary on the petition of the "Our Father," "And forgive us our trespasses," we read: "In refusing to forgive our brothers and sisters, our hearts are closed and their hardness makes them impervious to the Father's merciful love; but in confessing our sins, our hearts are opened to his grace" (2840). Another text from the *Catechism* makes the connection between grace and freedom: "By the working of grace the Holy Spirit educates us in spiritual freedom in order to make us free collaborators in his work in the Church and in the world" (1742). Satisfaction made in the spirit of Christian virtue ensures that those who have sinned regain their spiritual footing, so to speak, and once

offensae humani generis: primo quidem propter magnitudinem charitatis, ex qua patiebatur." "Christ, suffering in a loving and obedient spirit, offered more to God than was demanded in recompense for all the sins of mankind, because first, the love which led him to suffer was a great love...." Blackfriars edition of the *Summa theologiae*, vol. 54, *The Passion of Christ*, ed. Richard T.A. Murphy, O.P., p. 79.

again find themselves ready to take up freely the works of holiness incumbent on each Christian.