

Expressions by John D. Moloney
Sunday, April 10, 2016

MERCY

Father Ed kindly asked me, as an attorney, to discuss the legal concept of mercy in comparison to the religious concept. To do so, I feel it is useful to start with definitions.

As we all know, Pope Francis declared the Extraordinary Jubilee of Mercy. His purpose in doing so is to focus the Church on its mission to be a witness to mercy. In the Pope's own words, "We want to live in the light of the word of the Lord: 'Be merciful, even as your Father is merciful.'" In other words, as recipients of God's mercy, we each have a duty to show that mercy to our fellow man through our words and actions. Thus the Catholic definition of mercy is to have compassion for and if possible to alleviate the misfortune of others. Almsgiving (feeding the hungry, giving drink to the thirsty, clothing the naked, visiting the sick, among others) is a form of mercy, and, as I learned, the word "alms" is a corruption of the Greek word *eleemosyne* which means mercy. Spanish speakers reading this will quickly note that the Greek word for mercy is very similar to the word *limosna* which means alms.

It could be said that the Catholic definition of mercy is a very broad concept akin to that of love. By contrast, the legal definition of mercy is more narrowly drawn. In criminal law it is the total or partial remission of a punishment to which a person is subject. The President holds this power by virtue of Article II, Section 2, Clause 1 of the United States Constitution, and governors and pardon boards hold it at the State level through State laws or constitutions. It can take the form of a pardon, clemency, commutation of a sentence, and even amnesty. Preparing for this article reminded me that in 1977 President Carter granted amnesty to all who unlawfully avoided the military draft during the Vietnam War. Mandatory sentencing guidelines represent, in my opinion, a misguided elimination of the possibility of legal mercy in our criminal justice system.

It struck me that one stark difference between mercy in a religious context and mercy under the law is that the latter is based on a judgment of guilt whereas the former is not. In other words, when we show mercy to another as part of our duty as Catholics, we do so without judging. Under the law, you only receive the state's mercy if you are guilty or have been accused of a crime. In other words, legal mercy is a suspension of the law.

For me, the best juxtaposition of these two concepts of mercy (legal and religious) takes place in John's gospel in which the scribes and Pharisees bring a woman caught in adultery to Jesus. It cannot be disputed that she has broken one of the ten commandments given directly by God, and it cannot be disputed that the legal punishment under the law given by Moses was death by stoning. Jesus had no temporal legal authority to suspend that law and its punishment, but as the prototypical Christian he was able to exercise religious mercy. He did this by agreeing that the punishment should be imposed, but by requiring that the one without sin cast the first stone. Once the crowd had left and Jesus was alone with the woman, he forgave her and sent her on her way with an admonition to sin no more. As one commentator speculated regarding what Jesus was writing in the dust, it was most likely his new commandment of love, compassion, and . . . mercy.