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WRITING IN THE SAND: MERCY AND CHARITY ABOVE THE LAW?

Abstract. In this text the author elaborates the nature of the concepts of mercy and charity in western legal jurisdictions based on Judeo-Christian tradition and culture, arguing that both concepts, although different, have crucial roles in shaping justice and adjusting the repressive power states and governments possess. It is shown that contemporary law could not be fully fulfilled without the application of charity and mercy which guarantee the existence of law designed to serve humankind. Subsections of this article examine examples from Biblical Law to more recent legal systems and give the perspective in which the place of charity and mercy stays within the regulatory framework of contemporary legal scholarship.

Keywords: mercy, charity, biblical law, civil law, common law, justice

PISZĄC PALCEM PO PIASKU: MIŁOSIĘRDZIE I MIŁOŚĆ BLIŹNIEGO PONAD PRAWEM?

Streszczenie. W niniejszym tekście autor analizuje pojęcia miłosierdzia i miłości bliźniego w zachodnich systemach prawnych, opartych na tradycji i kulturze judeochrześcijańskiej argumentując, że oba te pojęcia, choć odmienne, odgrywają kluczową rolę w kształtowaniu sprawiedliwości oraz w regulowaniu represyjnej władzy, którą dysponują państwa i rządy. W artykule wykazuje się, że współczesne prawo nie mogłoby zostać w pełni urzeczywistnione bez zastosowania miłosierdzia i miłości bliźniego, które gwarantują istnienie prawa kształtowanego tak, by służyć człowiekowi. Poszczególne części artykułu omawiają przykłady od prawa biblijnego po nowsze systemy prawne, ukazując perspektywę, w której miłosierdzie i miłość bliźniego zajmują swoje miejsce w ramach regulacyjnych współczesnej nauki prawa.

Słowa kluczowe: miłosierdzie, miłość bliźniego, prawo biblijne, prawo cywilne, common law, sprawiedliwość

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1. INTRODUCTION

In a very well-known parable in the Gospel, Jesus meets His Jewish critics who ask him what they should do with the adulterous woman. In ancient Jewish Law, punishment for adultery was stoning to death. One might ask himself why Jewish scholars and Pharisees ask Jesus about the content of Jewish Law, which they all know well. Like many times recorded throughout the Gospels, this is a trap. If Jesus replies, yes they should stone her, as it is the Law and he is not merciful, but if he says to leave her, he is not following the Law. Instead, Jesus replies, “who among you is without sin should throw his stone first” (John 8:1–11, RSVCE).¹ We all know that nobody threw the stone and they all started to leave, starting from elders. This famous quote from the Bible is often cited and used as a message that one should not judge, but rather to reflect on themselves and ask the Lord to be merciful and charitable towards them. This was subsequently followed by other passages in the Gospel: one is quite precise in which Jesus asks us not to judge others, and that the measure of judgement through we judge, will be the measure for ourselves (Matt. 7:1–6, RSVCE). The major question, although quite provocative is: “who has the final word?” Is it justice, or is it mercy, or both? If the law in its juridical form has the final say, then should that law contain mercy and charity in order to exist in accordance with Divine or Natural Law, or, on the other hand should law be elementary, that is, (just) formal in its rigid, positivistic sense? Should law have to be embedded in mercy and charity in order to have that fundamental quality of serving mankind? Gustav Radbruch wrote that the law which does not contain a minimal quantity of humanity ceases being a law (Radbruch 1946, 105–108), and even before him St. Augustine with his famous “*lex iniusta non est lex*,” which arose from his “*nam lex mihi esse non videtur, quae iusta non fuerit*” argued in *De libero arbitrio voluntatis* (Augustine 1955, 5.11.33). This notion is present through today in contemporary legal theory through natural theorists like Fuller and Finnis, but also H.L.A. Hart who regardless of his positivist stance accepted that, although non-moral laws are valid, and despite the fact that he was critical towards the discretion when applying moral concepts, some moral considerations (e.g. forgiveness, mercy) should be considered in order to reach just solutions in specific circumstances. This approach, of course, made him an inclusive positivist (Hart 1997; Starr 1984, 673–689).

The result of this endeavor is that the mercy and charity embedded within humanity qualifies the law, that is, allows the law to become well-rounded and complete, thus becoming a true/perfected Law.

¹ All biblical quotations in this paper are taken from the Bible Gateway website, Revised Standard Version, Catholic Edition (RSVCE).

2. MERCY AND CHARITY

Etymologically, both mercy and charity have their roots in medieval Latin words. Mercy originates from *merced*, *merces* and, interestingly, is connected with paying the price, which was further evolved into the word merchandise. This root of the word might be of greater importance than one might think. If the law is, as Ulpianus states, *suum quique tribuere* then the equality of actions is the very center of understanding what the law really is: in Civil Law giving and receiving the same amount of value (goods or money or work) and in the Criminal Law adequate punishment for the severity of a particular crime, which in Judeo-Christian concept derives from the principle of *lex talionis*.² Mercy therefore presumes that something has been given and that the life has to be again put into a balance. Mercy includes benevolence or kindness or forgiveness and the main question is “who gives mercy and who is the subject or equalizer of returning the deeds into harmony?” Mercy by all means has more than one meaning: according to the Meriam-Webster Dictionary, mercy can be compassion or forbearance, blessing or act of divine favor, or compassionate treatment for those in need or distress (Merriam-Webster 2024a). It seems that for the act of mercy we have to be aware that there is one special relationship, in which one (person) is “in power,” and another “in need.” That would be a little bit different in relation to charity where there is also a similar relationship, but the person who is giving charity is not in the position to act based on power, but rather due to pure compassion, although those two overlaps. An even more important feature of the relationship is the fact that mercy is given in situations when person with his or her actions did not deserved kindness but his or her subsequent actions require it to be given. This is well explained by the Oxford Dictionary.³ In a particular sense, mercy requires repentance and this fills the gap which was done by the wrongdoing. In a specific sense mercy is often misplaced with charity although both exist with the same framework of love.⁴ The etymological roots of the word

² Although *lex talionis* is widely accepted as the moral concept of retaliation in which an eye is given for an eye and a tooth is given for a tooth, scholarship in the majority focuses too much on the concept of punishment and retaliation and less on the notion of an equal amount of action. And that is wrong. Jewish Law (*Hallacha*) describes what is based more on equality and less on the punishment and the nature of it. An eye and/or tooth has a value and what is requested is that the punishment reflects more on the value of wrongdoing than the pain itself. See more in: Savić (2018, 65–85).

³ “Clemency and compassion shown to a person who is in a position of powerlessness or subjection, or to a person with no right or claim to receive kindness; kind and compassionate treatment in a case where severity is merited or expected, esp. in giving legal judgment or passing sentence.” See Oxford English Dictionary (2024).

⁴ For instance, in art see Caravaggio’s famous painting *Seven works of Mercy* (*Sette opere di Misericordia*), which is more connected with Charity and in Italian it would be better and more accurate if this painting is called *Sette opere di Carità*. This famous painting shows Christian

mercy show that for mercy one must provide some sort of trade, or provide some sort of spiritual “market value” – and what would be the market value in this case? This value could be shown or unshown, but the existing remorse or the emotional willingness to repent for the wrongdoing by the perpetrator can allow the punishment proscribed by law to be substituted or filled in or swapped in return for mercy. In this relationship one side is weak(er) and another strong(er) and in power.

Charity on the other hand is a different kind of relationship. Charity is more connected with requesting on one side and receiving on the another, and mercy requires two-way “action”; although it might seem that mercy isn’t fulfilling actions on both sides – it is. While with charity we notice giving on one side and receiving on the other, in mercy we are aware of the two giving: one is by one who has power to forgive and on the another one who wants and require forgiveness. But it is true that in a particular way we could say that in both situations one side is more active and another is more passive. The Merriam-Webster Dictionary defines charity as generosity and helping those in need or suffering, then as the institution that cares about needy and poor, and then as public provisions funding those in need (Merriam-Webster 2024). Also, this is connected with a gift that is given for the public benevolent purposes or if the charitable institution was made or supported by such a gift; and also, lenient judgement of others.

3. MERCY AND CHARITY OVER JUSTICE

It is a question where mercy and charity could be found in contemporary western law. The examples are numerous if we follow the formula that both mercy and charity are some sorts of contracts, where mercy is a two-sided contract where both sides are required to perform duties and charity obligation only exists on one side. It has already been said that mercy is more connected with forgiveness and charity with generosity, but the question about these two concepts is: which is more connected to law? The answer is both. The more appropriate question would rather be: do mercy and charity constitute concepts which are part of the law itself or are those separated from it? In legal jurisprudence and statutory law, we can see both are present.

Three possible scenarios are evident: first is that those concepts are quasi-legal and they modify the law by making it, the second possibility is that mercy and charity are part of the core of law in its normative sense, and the third is that they are outside the law and that they are only used as a correction and perfection

charitable works for the people who are the most needy. In some languages, especially Slavic, charity and mercy is usually used by one homonym, e.g. in Croatian, *milosrđe*.

of the law itself by implementing them through juridical proceedings on a case-to-case basis.

At this point it is worth mentioning Aristotle's view on equity, which is often observed through the lenses of observing the positive and normative law as a system of rules that have to be corrected by subjective elements, which law as an objective system cannot encompass and therefore have to be considered when making just decisions to avoid unfairness and prevent from undeserved (but proscribed) harm. Both charity and mercy could fit the same pattern of using them (as well as equity) to balance and influence the final legal result regardless if they are considered part of legal system or not (Beever 2024, 33–50).

Mercy is obviously present in the legal concept of pardon or acts of clemency, and parole, and is in the judicature of both civil and common courts, although it is more prevalent in latter. "Pardon, in law, release from guilt or remission of punishment. In criminal law the power of pardon is generally exercised by the chief executive officer of the state. Pardons may also be granted by a legislative body, often through an act of indemnity, anticipatory or retrospective, for things done in the public interest that are illegal" (Bauer 2024). A pardon is explicit act of mercy but is almost always prescribed by law. In Commonwealth countries such as Australia and Canada, a pardon is based on the Royal prerogative of Mercy, which was initially in the monarch's hands.⁵ Obviously the recommendation on which a pardon is granted contains some amount of discretion (Colgate Love 2001, 125–133) which again is determined by law, usually Constitution or Statute. In European republican systems the pardon prerogative usually lies in the hands of the president and is usually done according to the recommendation of the Ministry of Justice or another Governmental Agency. The United States Constitution gives pardon rights to the president who, as it may seem, holds a fair amount of discretionary power to exercise that right,⁶ and at the same time the president may, by using pardon, show that there is a necessity of changing the law (usually softening of the legal norm). A typical example of this is when president J.F. Kennedy pardoned offenders under the Narcotics Control Act in 1956 as a beacon for the Congress to change the Law (Wex Definitions Team 2024).

⁵ Blackburn in *Monarchy and the personal prerogatives* explains that the "personal prerogative" of the monarch is a set of powers that must be exercised according to law, and must follow the advice of the Prime Minister, or in accordance with Parliament and the courts.

⁶ A pardon is the use of executive power that exempts the individual to whom it was given from punishment. The president's pardon power is based on Article II of the Constitution which says, "(...) he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. Unlike a commutation, which shortens or eliminates an individual's punishment, a pardon absolves the individual of guilt. For example, President Trump commuted Roger Stone's prison sentence so that Mr. Stone did not serve the punishment for his guilty conduct," see Wex Definitions Team (2024).

Mercy is present in the judicature of the Courts, namely in the Criminal Law when the judge in civil legal jurisdictions again, has discretionary power, but, and in accordance with precise criteria, to soften the punishment of the defender. It is important to stress that merciful softening always comes after the decision that the defendant is guilty. For instance, the age of the defendant together with the fact that he/she has shown real regret or even did everything in his or her power to repair or compensate his or her wrongdoing is a solid ground to reduce/lower a harsh(er) sentence to a milder one. In common law jurisdictions the judge may have even more discretionary power.

The famous case of Catherine Jane Stubbs (aka Ma Shanti Bhadra), a member of the international religious cult the Rajneesh movement (Rajneesh or Sannyasins) who was charged on attempted murder and murder conspiracy,⁷ after pleading guilty for the first charge, was sentenced to jail and served a year in federal prison after which she was released and left for Germany. Later on, she was indicted for the conspiracy to commit murder, but was unavailable since Germany refused to extradite her. She came to United States voluntarily and pleaded guilty. The judge had the right to impose any sentence up to life imprisonment, but instead he decided to allow her to leave on probation (United States Department of Justice 2005). In this case as well in all others where there is a combination of statutory rules and discretionary power, on one hand, we have asking for forgiveness, and, on the another, a merciful hand of those who hold that same power.

Charity could also be found in legal contexts when those in power release some of the burden of those who are subordinated to them, and by doing so they consider political circumstances often connected with elections or other public pressure. One might rightly ask if this is done because of personal or political interest, and argue that there is a lack of charity involved. But charity is also giving something to the one who is able and capable of receiving it. And yes, those who give could also have their interests involved, e.g., a sense of joy and expectation of earthly or heavenly rewards. Anyhow, charity is present in all cases when those in power give something they are not obliged to do, e.g., the state releases some burden of its citizens. For instance, that could be a tax decrease or giving the money or assets to people who suffered from a wildfire, flood or earthquake. These are clear forms of charity.

The main issue here is to address the question of the nature of charity and mercy with regard to the law and the legal system. As earlier, it seems that there are three possible ways of looking at this matter.

One approach is that mercy and charity are both extralegal entities which are here to make changes to law itself. In this proposition, mercy and charity are bodies outside the law which are used to repair the flaws of the law, by remaking the law itself, in order to establish the legal system as *ars boni et aequi*. In another

⁷ See the full list of defendants, charges and sentences: The Oregonian (n.d.).

proposition, charity and mercy are part of the law *ab initio* and therefore just forms of different legal expressions and existing normative reality. In this concept, legal expressions were initially extracted from societal norms and later dunked into the normative structure and therefore those societal norms became legal norms.⁸ A social norm becomes a legal norm when it becomes accepted by the legal system. In a particular sense every legal norm is a derivation of a specific social norm. Mercy and charity in a specific way belong to those norms that are part of the ethical and even spiritual fiber of the way at looking at things; they are connected with the notions of how things could and should be done.

The third situation exists when mercy and charity are concepts outside the law and law recognizes the, as such, but admits to implementing their logic into the system through procedural implementation in particular cases without being defined by legal norm *ab initio* – as the system wants to be more humane (not just, but humane). Here, the difference from the first proposition is that mercy and charity in both situations are extralegal concepts, but for the purpose of procedure in the third solution they become part of legal reasoning, while in the first option mercy and charity are concepts which are looked upon in order to make laws as such.

Of course, all this is derived from moral concepts and values of a humanistic society which are embedded in western culture and the western legal system – both in civil and in common law legal jurisdictions, and those values are connected with Judeo-Christian legal culture(s) (Welker 2014, 225–235). In all those propositions the concepts of mercy and charity are a specific upgrade of the Law.

Although the result of all three concepts leads to somewhat similar solutions, accepting any one of those three options could lead us to different practical implications. We have to distinguish to understand if charity and mercy is something law should be consisted of, or if mercy and charity are purely merely ethical interventions into the law but not part of it. It should be repeated in all three views that normative regulation will be required, either statutory or juridical (procedural). But for legal scholars it might be interesting to see if we take mercy and charity as integral part of Law or it is just borrowed (for). It seems that the concept of borrowing is more appropriate for common law jurisdictions and the statutory concept is more applicable to civil law systems although the common law is very much penetrated with statutory interventions as well.

If we take that Mercy and Charity are outside the law, then we have to admit that the only logical concept in which something that is outside the core of Law can intervene is that this is above the Law. It is really not important if those concepts are regarded as some sort of soft law or interventions from outside of the legal system and its body. Also, it is not important that the result of that penetration

⁸ In Legal Theory, legal norms are social norms and distinctive to all others due to the major characteristic, which is connection with the public authority in the form of its bringing and introducing into the legal system and secondly for the reason of coercion and enforcement.

is the “legalization” of those concepts. What is important is that there are social and ethical norms that prevail in western legal societies and systems, because they are founded and rooted in Judeo-Christian legal culture. Those roots are primarily religious and spiritual sources, but they have not been only that; they are already mentioned by the notion of humanity set up by Gustav Radbruch and the annulment of law if humanity in its minimal value does not exist.⁹ Requests for both mercy and charity, at the same time, are connected with tribal or family bonds that can be extended to a society as a whole.¹⁰

4. MERCY AND CHARITY AS BIBLICAL CONCEPTS

The most important Christian prayer “Our Father,” contains huge demands of those who pray to God, but at the same time there is an even larger request for those who pray. “Forgive us our debts, as we have forgiven to our debtors” (Matt. 6:12–13, RSVCE). In this very well-known passage of the Gospel we have both mercy and charity but in a particular way. The mercy we ask from God is dependent on our perpetual actions e.g., In Luke (11:2–4, RSVCE) request is connected with perpetual and ongoing action while in Matthew (6:9–13, RSVCE) our forgiveness belong to past tense through formula: “we have forgiven – please, You forgive us,” for in the standard relationship of mercy, just as in a two-sided relationship or a two-sided contract, there should be request for mercy through our words or actions. It is interesting that here the word “debt” is used, which correlates to the original meaning of the word “mercy.” By praying and receiving, the mercy debt is annulled and the societal peace is again reclaimed. The request, in any case, has to be more or less explicit and connected to the wrongdoings that were done. In prayer “Our Father” the request is deeper and wider in scope but even more concrete: we ask forgiveness as we were ready to offer forgiveness to others. In other words, those who pray ask for mercy according to the mercy which they have offered to others. It is a different form from when measuring what amount of wrongdoing exists and there is only one act of regret, which results in the annulment of one specific wrongdoing. When praying “Our Father,” those who pray are in perpetual movement of offering forgiveness as an ultimate form of mercy for actions of the wrongdoings that are daily present in their lives. This is a formula: we forgive, we ask you to forgive. This form is accepted in the Canon of the Catholic Church (Luke instead of Matthew). It is another form of perpetual mercy like in a paternal or maternal – child relationship, while other forms of mercy are more juridical and connected for particular crimes or wrongdoing.

⁹ For more on Mercy, also Radbruch and criminal justice see other insights into analysis of mercy in Criminal Law in: Snarski (2024, 1–5).

¹⁰ Compare to *Ibid.*

Charity is present in receiving daily bread, “give us our daily bread” (Matt. 6:11, RSVCE) as the faithful are aware of the presence of God in their lives and for that offer gratitude and thanksgiving.

There are numerous examples of Mercy and Charity both in the Old and New Testaments. The strongest example of mercy is probably when King David becomes merciful to Shimei who was cursing him, although by the power of Law he had the right to execute him (death penalty) (2 Sam 16:5–13, RSVCE). It is interesting that King David is merciful even though Shimei is not asking for mercy; the relationship that is important here is the relation of King David with God who was merciful to him, who is also a sinner. He transfers the mercy he received from God to Shimei although he did not ask for forgiveness and mercy, but the mercy was asked for later (2 Sam 19:16–23, RSVCE). What can be learned from those chapters of the Bible is that King David anticipates Shimei’s future behavior; he as a wise ruler who understands the nature of people and he is very well aware of his position, which is given by God, and that David himself has full power: in this Biblical story it is not even important that Shimei’s begging does not come from the heart, but the ruler is satisfied with the formal expression of guilt. Parallels can be made here with contemporary legal systems when judges may take into account various personal identities and qualities of the defendant and impose less strict sentences. This is very well present in both, civil and common law legal systems. Also, it shows that mercy requires power to be exercised (God or King, or Government).¹¹

Probably the most important story in the New Testament that describes both mercy and charity is the story of prodigal son – a very well-known text in which Jesus describes the love of the father to a son who has returned (Luke 15:11–32, RSVCE). That love actually consists of both mercy and charity. Of course, the image of the father is a personification of God’s existence as the supreme Being of love and compassion. In this Biblical text the prodigal son asks for his father’s forgiveness, and his only expectation is that his father accepts him as one of his workers. This is typical two-sided relationship, where both “parties” are active. The Father shows himself as a merciful father who gives more than the son could ever want and expect, prepares a feast for him, ask his workers to bring a ring for his finger and new robes – all signs of nobility and status. His father reinstates him as a member of his family. His mercy also contains charity; he gives his assets because his love is unconditional and always existed, even when there is still no action on the other side. This is the Biblical image of God – his father when he saw him start running towards him to give him charity. At that point no action is required or seen from his son. This image shows that he was looking for his son,

¹¹ I am most grateful for incidental insights and guidance which I have received by listening the lecture of Fr. Dario Tokić, OCarm, who was talking about forgiveness in the parish of St. Jerome in Zagreb, on November 16, 2024.

he was waiting for him, and at the pure sight of him, he was ready to hug him, feed him and put clothes on his body. This is the pure image of charity. After his son's words of regret, the perfection of mercy was fulfilled. In this story mercy absorbs charity and vice versa and it is clear that it contains both; his mercy is visible through his charity and his charity is visible through his mercy. From the legal point of view his father's actions were unnecessary, since justice towards his son was served, he had already received half of his inheritance, therefore the action of his father was both merciful and charitable, but also far beyond the justice and legal norms of Inheritance Law and the Laws of the land. This is also story of reintegration into society, which is also communicated through application of mercy and charity.

In that respect, pope Francis stresses the importance of mercy:

“Mercy towards a human life in a state of need is the true face of love” Pope Francis said, explaining that it is by loving the other that one becomes a true disciple of Jesus and that the face of the Father is revealed. “Be merciful, just as your Father is merciful” he quoted from Luke the evangelist, highlighting the fact that God's Commandment to love one's neighbor for Christians is a single and coherent rule of life. (Bordoni 2019)

And by doing so, we enter into the field of love, and love cannot be proscribed by law.

Regarding Magisterial Documents of the Catholic Church, it should be noted that, probably the most comprehensive and detailed elaboration of charity is contained in Pope Benedict XVI's Encyclical *Caritas in Veritate* in which one can see direct connection with the a) truth (seeking the truth) and b) justice (Benedict XVI 2009).

Pope Benedict XVI first addresses the question of charity and truth as understanding through the abundance of its values, which enables men and women to go beyond their personal opinions and judgements by asking them to seek what is important in its substance; it seems that this also requires moving from the solely formal aspect of pure and sometimes rigid justice, which is imbedded in national legal reality and its history.

Because it is filled with truth, charity can be understood in the abundance of its values, it can be shared and communicated. Truth, in fact, is *lógos* which creates *diá-logos*, and hence communication and communion. Truth, by enabling men and women to let go of their subjective opinions and impressions, allows them to move beyond cultural and historical limitations and to come together in the assessment of the value and substance of things. (Benedict XVI 2009, § 4)

Also, at the same time, it requires understanding that charity is interconnected with love and, in the Christian perspective cannot be detached from it, and at the same time it cannot be detached from the truth in order to avoid relativism. In other words, charity is interconnected with both justice and truth, which means that in reaching for justice, charity does not jeopardize it – it fulfills it. Justice, in

Christian view, is planted in God which is Love, as well as is charity. It also does not underestimate notions of justice which are products of the laws of society.

Truth opens and unites our minds in the *lógos* of love: this is the Christian proclamation and testimony of charity. In the present social and cultural context, where there is a widespread tendency to relativize truth, practicing charity in truth helps people to understand that adhering to the values of Christianity is not merely useful but essential for building a good society and for true integral human development. A Christianity of charity without truth would be more or less interchangeable with a pool of good sentiments, helpful for social cohesion, but of little relevance. In other words, there would no longer be any real place for God in the world. Without truth, charity is confined to a narrow field devoid of relations. It is excluded from the plans and processes of promoting human development of universal range, in dialogue between knowledge and praxis. (Benedict XVI 2009, § 4)

It is interesting to analyze Pope Benedict XVI's further explanation about charity as the grace which we have received. If we observe charity and its implication within the legal system through the lenses of Christianity we would easily encounter what is obvious: charity is what we all receive even if undeserved; charity arises from God's unconditional love for every man and woman and for His understanding of our particular omissions and circumstances. The greatest sign of this is Jesus' words on the Cross: "Father, forgive them; for they know not what they do" (Luke 23:34, RSVCE). In this sense charity and mercy go out of the pure concept of what would be right in the perspective of law through a notion of justice that is derived from love and then the truth itself.

Charity is love received and given. It is "grace" (*cháris*). Its source is the wellspring of the Father's love for the Son, in the Holy Spirit. Love comes down to us from the Son. It is creative love, through which we have our being; it is redemptive love, through which we are recreated. Love is revealed and made present by Christ (cf. Jn 13:1) and "poured into our hearts through the Holy Spirit" (Rom 5:5). As the objects of God's love, men and women become subjects of charity, they are called to make themselves instruments of grace, so as to pour forth God's charity and to weave networks of charity. (Pope Benedict XVI 2009, § 5)

Justice can't reach its fulfillment without charity because then it does not produce the truth necessary to have social conscience and responsibility; charity is necessary to have society where social actions don't only adhere to the logic of power.¹²

The core of the Encyclical is explaining the interconnections between justice and charity where the Pope accepts that every society has its own system of justice, but adds that charity goes beyond justice and never lacks justice. As the Pope describes it, justice and charity are two separate entities, but interconnected in a such way that one (justice) cannot be complete without the other (charity).

¹² See Benedict XVI (2009, § 5): "Without truth, without trust and love for what is true, there is no social conscience and responsibility, and social action ends up serving private interests and the logic of power, resulting in social fragmentation, especially in a globalized society at difficult times like the present."

Not only is justice not extraneous to charity, not only is it not an alternative or parallel path to charity: justice is inseparable from charity, and intrinsic to it. Justice is the primary way of charity or, in Paul VI's words, "the minimum measure" of it, an integral part of the love "in deed and in truth" (1 Jn 3:18), to which Saint John exhorts us. On the one hand, charity demands justice: recognition and respect for the legitimate rights of individuals and peoples. (Pope Benedict XVI 2009, § 6)

Only Justice with charity makes justice rounded up in perfection, two entities, but coexistent and integral. It seems that it is clear that "the right" justice contains charity and that pure rigid legal reasoning where law that is the sum of rights and duties can't satisfy the moral demands of societies in need. It is not possible without charity and mercy,¹³ and the quest for common good (Pope Benedict XVI 2009, § 7).

Also, in a Thomistic approach, justice is more than juridical justice, which is accepted by positivists worldwide as a sum rights and obligations (duties); on contrary it is a "net" of laws and virtues like charity, mercy, love, compassion, forgiveness that made it rounded and sound; Biblical justice is far more than the simple dichotomy between rights and duties (Philpott 2020, 1148). Justice as a Biblical concept is based on proper and right relationships.¹⁴ Even more, justice from a Biblical perspective describes the character and desires of God (Philpott 2020, 1152),¹⁵ and if so, Jesus' examples of living are crucial to understanding that the Law itself should not be a formal and rigid system deprived from both charity and mercy.

5. WRITING IN THE SAND: BIBLICAL REFLECTIONS ON MERCY (AND CHARITY)

"In the dust writes and in the sand plants who tries to proud and shrew man give an advice" (Marulić 2021).

Famous Croatian writer Marko Marulić, author of the epic masterpiece "Judita" wrote those words of significant importance, with profound meaning that giving advice to a proud and shrew man is useless, because his heart is not able to receive it; by doing so his words turn into dust and do not yield fruit. In the very well-known story from the Gospel, when the adulterous woman is brought before Jesus and when Jesus was asked what should be done with her, He writes in the sand.

¹³ See Pope Benedict XVI (2009, § 6): "The earthly city is promoted not merely by relationships of rights and duties, but to an even greater and more fundamental extent by relationships of gratuitousness, mercy and communion. Charity always manifests God's love in human relationships as well, it gives theological and salvific value to all commitment for justice in the world."

¹⁴ See Philpott (2020, 1148–1149). For similar and more detailed notions on relationships and God's desire for people to follow the Law which God loves see Philpott (2022, 172).

¹⁵ Compare to Psalm 11:1.

Jesus returned to the Mount of Olives, but early the next morning he was back again at the Temple. A crowd soon gathered, and he sat down and taught them. As he was speaking, the teachers of religious law and the Pharisees brought a woman who had been caught in the act of adultery. They put her in front of the crowd. "Teacher," they said to Jesus, "this woman was caught in the act of adultery. The law of Moses says to stone her. What do you say?" **They were trying to trap him into saying something they could use against him, but Jesus stooped down and wrote in the dust with his finger.** They kept demanding an answer, so he stood up again and said, "All right, but let the one who has never sinned throw the first stone!" Then he stooped down again and wrote in the dust. When the accusers heard this, they slipped away one by one, beginning with the oldest, until only Jesus was left in the middle of the crowd with the woman. Then Jesus stood up again and said to the woman, "Where are your accusers? Didn't even one of them condemn you?" "No, Lord," she said. And Jesus said, "Neither do I. Go and sin no more." (John 8:1–11, RSVCE)

Exegesis of this text is usually quite clear: the Pharisees are asking a question that does not have a right answer; this is trap question. If Jesus replies that she has to be stoned, he is not merciful, and if He insists that she has to be released, He would be against the Law.¹⁶ Instead, Jesus answers in order to provoke their hearts and the result is that she received forgiveness both from the crowd and from Jesus himself. It is quite rare that writers write about the posture of Jesus and his writing in the sand. Croatian writer Marulić writes about hearts of mean and proud men who are full of "justice" but in reality, do not care about anybody else but themselves. He writes that is useless to educate people who do not want to receive knowledge and wisdom, except if that wisdom comes from themselves. And Jesus is doing exactly this. Why? Who is writing in the sand? Who is trying to build the house in the sand? as another parable of Jesus contemplates.¹⁷ Sand and dust are used in the Bible because they disappear, on which nothing firm can be built or exist. So, who is writing in the sand, or builds in the sand? Obviously only a crazy or unwise man. But then, why is Jesus writing in the sand during the encounter with the Pharisees? He writes in the moment when they ask him a legal question – this is actually a question about the necessity of respecting the Law. This is an obvious example of invoking mercy into the Law. He wants to say Law exists, but without your hearts Law does not have a value, like your question or Law itself. Jesus points to each one of them and asks them to show mercy. He did not ask them to break the Law, he asks them to be merciful, to go deep into their hearts. This is exactly what Jesus talks about on other occasions regarding the nature of the law when he says "do not think that I have come to abolish the Law

¹⁶ Jewish Law (Hallacha).

¹⁷ "Everyone then who hears these words of mine and does them will be like a wise man who built his house on the rock. And the rain fell, and the floods came, and the winds blew and beat on that house, but it did not fall, because it had been founded on the rock. And everyone who hears these words of mine and does not do them will be like a foolish man who built his house on the sand. And the rain fell, and the floods came, and the winds blew and beat against that house, and it fell, and great was the fall of it." See John (7:24–27, RVSCE).

or the Prophets; I have come not to abolish but to fulfil” (Matt. 5:17, RSVCE). So explicitly mercy, and then subsequently charity exist for the fulfillment of the law, and without them it cannot be perfected. What is the message from this story? It is the narrative that if law lacks mercy and charity it remains inhumane and that that kind of law is in fact against God and nature because that kind of law would be lifeless. In that respect, law would miss the desirable or necessary amount of humanity and this is the same message that both Jesus and Radbruch, as well as so many others share, each one of them through their own contexts.

6. CONCLUSION

Mercy and Charity, two constructs derived from both religious and humanistic social contexts, exist in contemporary western legal systems, both in civil and common law legal traditions. Despite the fact that manifestations of both may differ from one system or another and that the presence of those could be defined by different roots, the fact is that they exist and influence legal systems: namely rules of the legal process, sentencing and punishment, but also various branches of law like taxation, labor or inheritance. Although all norms of legal systems are in fact directly or indirectly derived from societal norms, their nature is somehow different than all others. Their specialty lies in the fact that they are able to penetrate each branch of the law: they are specific but they are universal. Why is that so? The nature of law should be serving to mankind, law as a concept cannot exist with human activities, interaction and life, and law is necessity for mankind. Nothing more than charity and mercy does not serve the principal and universal human need for understanding, forgiveness and love, even in the strict and often narrow normative orders of contemporary laws. Mercy and Charity, both, are close to being supra-legal or meta legal concepts that are applied to law, equally in common law or statutes for the reasons of reparation, understanding, forgiveness, and putting things back into the order and balancing. Without them in law, human society does not exist and with them law becomes what people require from the law itself. Charity and Mercy as relationships between the parties are both above the law and part of the law at the same time, or better to say they are part of the law that makes it more human and more divine.

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