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Pope Pius XII

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CRIME AND PUNISHMENT[†]

POPE PIUS XII

THE QUESTION which We shall examine today was suggested to Us by one of you, the illustrious Professor Carnelutti. It is: the function of punishment, the “redeeming of the criminal through repentance”; a question which We should like to formulate in this manner: crime and punishment in their reciprocal relationship. We should wish, that is, to indicate in broad outline the path of a man from the state of noncriminality, through the actual crime, to the state of criminal guilt and its punishment (*reatus culpae et poenae*); and vice versa, the return from this state, through repentance and expiation, to the state of liberation from the crime and punishment. We shall be able then to see more clearly what is the origin of punishment, what is its nature, what its function, what form it should take in order to conduct the criminal to his liberation.

The Path toward Crime and Punishment

It is necessary here to make two preliminary remarks.

Above all, the problem of crime and of punishment is a problem concerned with persons, and this under a double aspect. The path toward crime takes its beginning from the person of the one acting, from his “Ego.” In the sum of the actions which proceed from the Ego as from a center of action, there is question here only of those which are based upon a conscious and voluntary determination; that is, acts which the Ego was able to perform or not perform, those which it performs because it has freely determined to do so. This central function of the Ego with regard to itself – even if operating under various influences of a different nature – is an essential element when there is question of true crime and true punishment.

[†]This address was prepared for the December 5, 1954 meeting of the Italian Association of Catholic Jurists. (Translation taken from 53 CATHOLIC MIND 364 (1955).)

The criminal act, however, is also always an opposition of one person against another, both when the immediate object of the crime is a thing, as in theft, and when it is a person, as in murder; further, the Ego of the person who becomes a criminal is directed against higher authority, and therefore in the end always against the authority of God. In this matter We, Who have as Our aim the true problem of crime and punishment properly so-called, prescind from the merely juridical crime and from its consequent penalty.

It is also to be observed that the person and the function of the person who is the criminal form a strict unity, which in its turn presents different aspects. Simultaneously it concerns the psychological, juridical, ethical and religious fields. These aspects can certainly also be considered separately; but in true crime and punishment they are so closely related among themselves that only by taking them all together is it possible to form a correct concept about the criminal and the question of crime and punishment. It is not even possible, therefore, to treat this problem unilaterally, merely under its juridical aspect.

The path toward crime therefore is this: the spirit of a man is found in the following situation: it is faced with the performance or omission of an action, and this performance or omission is presented to it as simply obligatory, as an absolute "you must," an unconditional demand to be fulfilled by a personal decision. The man refuses to obey this demand: he rejects the good, accepts the evil. When the internal resolution is not terminated within itself, it is followed by the external action. Thus the criminal action is accomplished both internally and externally.

As far as the subjective side of the crime is concerned, in order to judge rightly it is necessary to take into account not only the external act, but also the influences, both internal and external, which have cooperated in the decision of the criminal, such as innate or acquired dispositions, impulses or obstructions, impressions from education, stimulations from persons or things in the midst of which the person lives, circumstantial factors, and in a particular way the habitual and actual intensity of the will-act, the so-called "criminal urge," which has contributed to the accomplishment of the criminal act.

Considered in the object affected by it, the criminal action is an arrogant contempt for authority, which demands the orderly maintenance of what is right and good, and which is the source, the guardian, the defender and the vindicator of order itself. And since all human authority cannot be derived ultimately except from God, every criminal act is an opposition to God Himself, to His supreme law and sovereign majesty. This religious aspect is inherently and essentially connected with the criminal act.

The object affected by this act is also the legally established community, if and in as far as it places in danger and violates the order established by the laws. Nevertheless not every true criminal act, as described above, has the character of a crime against the public law. Public authority must be concerned only with those criminal actions which injure the orderly society as established by law. Hence, the rule concerning a juridical crime: no crime where there is no law. But such a violation, if it is otherwise a true criminal act in itself, is also always a violation of the ethical and religious norm. It follows therefore that those human laws which are in contradiction to

divine laws cannot form the basis for a true criminal act against the public law.

Connected with the concept of the criminal act is the concept that the author of the act becomes deserving of punishment (*reatus poenae*). The problem of punishment has its beginning, in an individual case, at the moment in which a man becomes a criminal. The punishment is the reaction, required by law and justice, to the crime: they are like a blow and a counter-blow. The order violated by the criminal act demands the restoration and re-establishment of the equilibrium which has been disturbed. It is the proper task of law and justice to guard and preserve the harmony between duty, on the one hand, and the law, on the other, and to re-establish this harmony if it has been injured. The punishment in itself touches not the criminal act, but the author of it, his person, his Ego, which with conscious determination has performed the criminal act. Likewise the punishing does not proceed, as it were, from an abstract juridical ordination, but from the concrete person invested with legitimate authority. As the criminal act, so also the punishment opposes person to person.

Punishment properly so-called cannot therefore have any other meaning and purpose than that just mentioned, to bring back again into the order of duty the violator of the law, who had withdrawn from it. This order of duty is necessarily an expression of the order of being, of the order of the true and the good, which alone has the right of existence, in opposition to error and evil, which represent that which should not exist. Punishment accomplishes its purpose in its own way, in as far as it compels the criminal, because of the act performed, to suffer, that is, it deprives him of a good and imposes upon him an evil. But in order that

this suffering may be a punishment, the causal connection with the crime is essential.

The State of Guilt and Punishment

We add that the criminal has brought about, by his act, a state which does not automatically cease when the act itself is completed. He remains the man who has consciously and deliberately violated a law which binds him (*reatus culpa*), and simultaneously he is involved in the penalty (*reatus poenae*). This personal condition endures, both in his relation to the authority on which he depends (or better, the human authority of public law in so far as this has a share in the corresponding penal process), and at all times also in his relation to the supreme divine authority. There is thus brought about an enduring state of guilt and punishment, which indicates a definite condition of the guilty party in the eyes of the authority offended, and of this authority with respect to the guilty party. (St. Thomas: *Sum. Theol.* III, q. 69, a.2, obj. 3 et ad 3.)

An attempt has been made — based on the idea that time and space, formally considered, are not simply realities, but instruments or forms of thought — to draw the conclusion that, after the cessation of the sinful action and of the actual punishment, one can no longer speak of any permanent quality belonging to them in reality, in the real order, and therefore, of any state of guilt or punishment. If this were so, one should have to abandon the principle: "What's done, cannot be undone." Applied to a spiritual action — such as a criminal act is of its very nature — this principle would be based (as is asserted) on a false valuation, and on an erroneous use, of the concept of time. We would be going outside the

limits of Our discourse if We were to treat here of the question of space and time. It will be enough to note that space and time are not simply thought-forms, but have a basis in reality. At any rate, the conclusion which is drawn from them against the existence of a state of guilt is invalid. Undoubtedly man's fall into sin takes place on this earth in a definite place and at a definite time, but it is not a quality of that place or that time, and, therefore, its cessation is not connected with the cessation of a "here" and a "now."

What We have so far explained concerns the essence of the state of guilt and punishment. On the other hand, by virtue of the special prerogative of the higher authority, to which the culprit has refused due obedience and submission, its indignation and disapproval turn against not only the action, but its author, against his person on account of the action.

With the act of crime is immediately linked, as was just now indicated, not the punishment itself, but the guiltiness and punishability of the action. Nonetheless, there is not excluded a penalty, which, by virtue of a law, is incurred automatically at the moment of the criminal action. In Canon Law are recognized penalties ("*latae sententiae*") liable to be incurred by the very fact of committing a sin. In civil law, such a penalty is rare, nay, in some legal systems, unknown. Always, moreover, this automatic incurring of a penalty supposes real and serious guilt.

Consequently, it is customary for the penalty to be imposed by a competent authority. That presupposes a penal law actually in force, a legal person invested with authority to punish, and in him certain knowledge of the act to be punished, as much from the objective standpoint, that is

to say, concerning the actual commission of the crime contemplated by the law, as from the subjective standpoint, that is, from a consideration of the culpability of the guilty one, its gravity and extension.

This knowledge, necessary for pronouncing a penal sentence, is, before the court of God the Supreme Judge, perfectly clear and infallible, and to have called attention to it cannot be without interest to the jurist. God was present to the man in the internal resolve, and in the external execution of the criminal act, having all fully within His gaze down to the last detail; all is before Him now, as in the moment of the act. But this knowledge in absolute fullness and sovereign certainty, at every instant of life, and over every human act, is proper to God alone. Because of this, there belongs to God alone the final judgment on the value of a man, and the decision on his ultimate fate. He pronounces the judgment as He finds the man at the moment He calls him to eternity. Yet an infallible judgment of God exists also during life on earth, and not only taken as a whole, but over every sinful act, together with the corresponding penalty; yet, in spite of the ever-ready divine disposition to forgiveness and remission, in some cases He carries it into effect during the present life of the man.

The human judge, on the other hand, since he does not possess the omnipresence and omniscience of God, has the duty of forming for himself, before issuing a judicial sentence, a moral certainty — that is, one which excludes every reasonable and serious doubt about the external fact and the internal culpability. But he does not have immediate insight into the interior dispositions of the accused at the very moment of the crime; rather in most cases the judge is not in a position to reconstruct

them with absolute clarity from the arguments offered in proof, nor, often enough, even from the confession of the delinquent. But this difficulty should not be exaggerated as though it were ordinarily impossible for a human judge to attain sufficient certainty, and therefore a solid foundation for a sentence. According to the cases, the judge will not fail to consult renowned specialists on the capacity and responsibility of the presumed criminal, and to take into consideration the findings of the modern sciences of psychology, psychiatry and characterology. If, despite all these precautions, there still remains a grave and serious doubt, no conscientious judge will proceed to pronounce a sentence of condemnation, all the more so when there is a question of an irrevocable punishment, such as the death penalty.

In most crimes external behavior is already sufficient manifestation of the internal motivation which was responsible for the crime. Therefore, ordinarily one can — and at times one even should — deduce a substantially sound conclusion from the exterior; otherwise juridical actions would be rendered impossible for mankind. On the other hand, one should not forget that no human sentence finally and definitely settles the fate of a man, but only the judgment of God, both for single acts and for those of a lifetime. Consequently, in every case where human judges have erred, the Supreme Judge will re-establish equilibrium, first of all, immediately after death with the definitive judgment on the whole life of a man, and then later and more fully in the final and universal judgment before all men. This is not to be understood as though it dispenses a judge from conscientious and exact efforts in ascertaining the facts. Still, there is something magnificent in the realization that there will be a final equation of guilt and punishment which will be abso-

lutely perfect.

Whoever has the duty of guarding the accused person in protective custody should not fail to bear in mind the painful burden which the investigation itself inflicts upon the prisoner, even when those methods of investigation are not being employed which cannot be justified in any way. Ordinarily these sufferings are not taken into account when the penalty is finally inflicted, a consideration which would be difficult to realize. However they should not be lost sight of.

In external juridical matters the sentence of the court is definitive for all that concerns guilt and punishment.

In your sessions, illustrious gentlemen, there was manifested the desire that by means of legislation some relaxation be introduced in the obligation which binds the judge to the articles of the penal code. Not, of course, in the way the duty of the praetor was interpreted by Roman law, "*adiuvandi, supplendi vel corrigendi iuris civilis gratia*" ("to help, supplement or correct civil law"), but in the sense of a freer evaluation of the objective facts over and above the general juridical limits set by legislative authority. Thus, even in penal law, a kind of "*analogia iuris*" would be applicable, and the discretionary power of the judge would be extended beyond the limits hitherto accepted as valid. It is believed that in such a way there would result a notable simplification of penal laws and a considerable diminution of the number of particular crimes. At the same time it would help to make people better understand exactly what the state considers deserving of punishment, and for what reasons.

For this proposition a certain foundation can surely be admitted. In any case, the ends which this proposition has in view —

namely, the simplification of the norms of law, the prominence given not only to strict formal law but also to equity and spontaneous good judgment, the better adaptation of penal law to popular sentiment — are not, We say, vulnerable to objection. The difficulty would arise not so much on the theoretical side as from the form of its realization, which, on the one hand, should preserve the guarantees of the existing order and, on the other hand, take into account the new needs and reasonable desires of reform. Canon Law offers examples in this sense, as is evident from Canons 2220-2223 of the *Code of Canon Law*.

In what concerns the various kinds of penalties, penalties concerning honor, [juridical capacity], inheritance, personal freedom, body and life — bodily punishment is not provided for in Italian law — We will, in Our explanation, limit Our remarks concerning them to the nature and purpose of punishment. Since, however, as We have already noted, some jurists do not hold the same opinion concerning the meaning and purpose of punishment, it follows that their views of various punishments are also different.

Up to a certain point it may be true that imprisonment and isolation, properly applied, is the penalty most likely to effect a return of the criminal to right order and social life. But it does not follow that it is the only just and effective one. What We said in Our discourse on international penal law, on Oct. 3, 1953, referring to the theory of retribution, is to the point here. Many, though not all, reject vindictive punishment, even if it is proposed to be accompanied by medicinal penalties. We then declared that it would not be just to reject completely, and as a matter of principle, the function of vindictive punishment. As long as man is on earth, such

punishment can and should help toward his definitive rehabilitation, provided man himself does not raise barriers to its efficacy, which, indeed, is in no way opposed to the purpose of righting and restoring disturbed harmony, which, as We already pointed out, is an essential element of punishment.

The inflicting of punishment finds its natural complement in its being carried out as the effective privation of a good, or the positive imposition of an evil, by competent authority as a reaction to the criminal action. It is a weight placed to restore balance in the disturbed juridical order, and not aimed immediately at the fault as such. The criminal action has revealed in the guilty person an element that clashes with the common good and with well ordered life with others. Such an element must be removed from the culprit. The process of removing it may be compared with the intervention of a doctor in the body, an intervention which may be painful, especially when the cause of sickness, and not the symptoms, must be dealt with. The culprit's own good, and, perhaps, more so that of the community, demand that the ailing member become sound again. The meting out of punishment, however, no less than the healing of the sick, demands a clear diagnosis of causes, not merely of symptoms, a therapy adapted to the ailment, a cautious prognosis and a suitable prophylaxis.

The meaning and purpose of the punishment, and the intention of the punishing authority, which is usually in agreement with that purpose, indicate the attitude the culprit should have; it is that of acknowledgment of the evil done, which provoked the penalty; of aversion from, and repudiation of, the evil deed itself, of repentance, expiation and purification, and purpose of

future amendment. That is the path the condemned man should follow. The problem, however, is whether he will really take it. Turning Our attention to such a question, it may be helpful to consider the suffering caused by the punishment, according to its various aspects: psychological, juridical, moral and religious, though normally these various aspects are all closely united in the concrete.

Psychologically, nature spontaneously reacts against the physical evil in the penalty, her reaction being all the stronger in proportion to the suffering imposed on human nature as such, or on the individual temperament. Along with this, there is a fixing, likewise spontaneous, of the culprit's attention on the criminal action which caused his punishment, and whose connection is now vividly before his mind, or at least is now uppermost in his conscience.

Following such more or less involuntary attitudes, there appears the conscious and willed reaction of the Ego, the center and source of all personal actions. This higher reaction can be a voluntary, positive acceptance, as is shown by the good thief on the cross: "We receive what our deeds merit" (Luke, 23, 41). It may be mere passive resignation; or at times it may be a deep bitterness, a total interior collapse; then, too, it may be a proud resistance, which at times becomes a hardening in evil; finally it may be a complete revolt, savage but impotent. Such psychological reactions take differing forms, depending on whether there is question of a long punishment, or of a short punishment, short in time, but surpassing in height and depth all time-measure — the pain of death, for example.

Juridically, execution of the punishment implies the valid, effective action of the higher and stronger power of the juridical

community (or rather, of the one possessing authority in this community) on the law-breaker, who, obstinately opposed to the law, has culpably violated the established juridical order, and now is forced to submit to the prescriptions of that order — for the greater good of the community and of the criminal himself. Thus the idea and necessity of penal law is clear.

On the other hand, justice demands that, in carrying out the provisions of penal law, any increase of those punishments provided for the case, as also any arbitrary harshness, annoyance or provocation, be avoided. Higher authority must see to the carrying out of the punishment, and give it a form which will correspond to its purpose, not in an unyielding fulfillment of minute prescriptions, but in adapting it, so far as possible, to the person to be punished. Indeed the gravity and dignity of the power to punish, and its exercise, naturally indicate that the public authority view as its main duty contact with the person of the guilty one. Judgment on him must be made, therefore, according to special circumstances, if the functioning of that office is to be fully taken care of through the proper channels. Very often, if not always, one aspect of punishment must be entrusted to others, especially the real and effective care of souls.

Some have proposed that it would be well to establish a religious congregation or a secular institute which would care more extensively for the psychological assistance of prisoners. Undoubtedly nuns have long been bringing the warmth and good influence of Christian charity to women's prisons; for Us this is a good opportunity to express to them Our gratitude. Still, the above-mentioned proposal seems worthy of deep study, and We express the hope that a like foundation, no less than

those religious and ecclesiastical associations already active in houses of detention, will give full play to the energies released by the Christian Faith; We hope, too, that all the solid results produced by investigation and experience in the field of psychology, psychiatry, pedagogy and sociology will be used to the advantage of the imprisoned. This naturally presupposes a thorough professional training in those called to such work.

No one who is in any way familiar with the actual application of punishment will nurse utopian dreams of great success. The good-will of the prisoner must match any outside influence, but that cannot be gotten by force. May divine grace arouse and direct that good-will!

The moral aspect of carrying out of punishment and the sufferings effected are in relation to the purpose and principles which should determine the dispositions of the condemned.

To suffer in this life means practically a turning of the soul within itself; it is a path which drives one from the superficial to deep within oneself. Considered in that light, suffering has great moral value. Pre-supposing a right intention, its free acceptance is a priceless act. "*Patientia opus perfectum habet,*" ("Suffering makes a perfect work"), writes St. James (1, 4). That is true also of the sufferings caused by punishment, which can bring progress to one's interior life. By its nature it is a reparation and a restoration — through and in the guilty person, and willed by him — of the culpably violated social order. The essence of the return to good consists more exactly, in breaking away from the fault than in the free acceptance of suffering. Suffering, however, can lead to this break, and turning away from one's wrongdoing can, in its turn, be of great moral value,

and facilitate and elevate its moral effectiveness. Thus, suffering can reach moral heroism, heroic patience and expiation.

In the area of moral reaction, however, contrary manifestations are not lacking. Often the moral value of punishment is not even recognized; often it is consciously and deliberately rejected. The criminal will neither recognize nor confess his guilt, will in no way submit to good, will no expiation or repentance for his own crimes.

And now a few words on the religious aspect of the suffering which results from punishment.

Every moral transgression of man, even if materially committed only in the sphere of legitimate human laws and then punished by men according to positive human law, is always a sin before God and calls down upon itself from God a punitive judgment. Not to take this into account is contrary to the interest of public authority. Sacred Scripture (Romans 13, 2-4) teaches that human authority, within its own limits, is, when there is question of inflicting punishment, nothing else than the minister of divine justice. "For he is God's minister: an avenger to execute wrath upon him that doth evil."

This religious element in the infliction of punishment finds its expression and realization in the person of the guilty one, in so far as he humbles himself under the hand of God Who is punishing him through the instrumentality of men; thus he is accepting his sufferings from God, offering them to God as a partial payment of the debt which he has contracted before God. Accepted in this way, punishment becomes for the guilty person a source of interior purification on this earth, of complete conversion, of resolution for the future, a bulwark against possible relapse. Suffering thus accepted with faith, repentance and

love is sanctified by the pains of Christ and supported by His grace. This religious and holy meaning of suffering due to punishment is impressed upon us by the words which the good thief addressed to his crucified companion: "We receive the due rewards of our deeds," and by his prayer to the dying Redeemer: "Lord, remember me when thou shalt come into thy kingdom"; a prayer which, when weighed upon the scales of God, brought to the repentant sinner the assurance of the Saviour: "This day thou shalt be with me in paradise" (Luke 23, 41-43); the first plenary indulgence, as it were, granted by Christ Himself.

May all who have fallen under the blows of human justice suffer the punishment inflicted upon them not in a spirit of duress, not without God and without Christ, not in revolt against God, not spiritually shattered by anguish; but may it open for them the way which leads to holiness.

Liberation From the State of Guilt and of Punishment

It remains now to speak of the final section of the path which We wished to point out to you, that is, the return from the state of guilt and punishment to that of liberation.

Liberation from guilt and liberation from punishment are not necessarily identified, either in concept or in reality. Prescinding from the fact that, in the sight of God, the remission of eternal punishment is always connected with the remission of grave guilt — guilt may be remitted without necessarily implying the extinguishing of the penalty. On the other hand, the penalty may have been paid without the guilt having ceased to exist in the inner being of the culprit.

Now, the return to the juridical and ethical order consists essentially in the liberation from guilt, and not from punishment.

In the exposition of the first section of this path, We pointed out the internal and external character of the guilty act, that is, in relation to its author, as also in its relations to higher authority, which is, in the last analysis, the authority of God Himself, Whose majesty, justice and holiness are slighted and offended in every culpable act.

Liberation from guilt must, therefore, reintegrate the relations disturbed by the culpable act. If we are dealing with a simple real debt, that is, one that is concerned with purely material considerations, it may be fully extinguished by the handing over of the thing required, without the necessity of any personal contact with the other party. If, however, there is question of a personal offense (either by itself or connected with a real debt), then the culprit is bound to an obligation, in the strict sense, to the person of the creditor. It is from this strict obligation that he must be released. And because, as We have already said, this obligation has a psychological, juridical, moral and religious aspect, so his liberation must have a similar aspect.

Guilt, however, in its internal element, also implies in the culprit a state of enslavement and of bondage on his part to the object to which he has given himself in the performance of the culpable act; that is, in substance, an enslavement to a pseudo-ego whose tendencies, impulses and ends constitute in man a caricature of the genuine ego, intended by the Creator and by nature only for the good and the true. This contradicts those norms of the right path according to whose direction man, made in the image of God, should act and

form himself. From this enslavement also must there be effected a psychological, juridical, moral and religious liberation.

In human law, we may speak of a sort of liberation from guilt when the public authority no longer proceeds against the culpable act; for example, even without regard to the actual internal dispositions of the culprit, by positive remission of the guilt on the part of authority, or because there has expired the period established by the law within which exclusively the same authority intends, under certain conditions, to bring before its tribunal, and to pass judgment upon, the violation of the law that has taken place. However, this way does not constitute an interior conversion, a metanoia, a liberation of the ego from its interior slavery, from its will to evil and to illegality. Now, it is only to this liberation from guilt in its proper meaning, to this metanoia (that is, change of mental attitude), that we would wish here to draw attention.

Psychologically considered, the liberation from guilt is the abandonment and retraction of the perverse will freely and consciously placed by the ego in the culpable act, and the renewed intention to will what is right and good. This change of will presupposes a return into oneself, and hence an understanding of the evil and culpability of the resolution formerly taken against the good recognized as obligatory. There is united to such understanding the reprobation of the evil done, repentance as directly willed sorrow, deliberate regretfulness in the soul for the evil perpetrated because it was wicked, contrary to law and, in fine, contrary to God. In this catharsis of the inner being, there is also accomplished and included a withdrawing from the false good to which man had turned in

his guilty act. The culprit begins to submit himself to the order of justice and right, in obedience to its author and guardian, against whom he had rebelled.

This leads psychologically to the final step. Since the culpable act — as already mentioned — is not the offense directed against an abstract norm of law, but is, in substance, a stand against the person of the obligating or prohibiting authority, complete conversion tends, through psychological necessity in one form or another, toward the person of the offended authority with the explicit or implicit sorrowful confession of the fault, and with interior petition for remission and pardon. Holy Scripture gives us brief and classic examples of such repentance, like the words of the publican in the Temple: "O God, be merciful to me, a sinner." (Luke 18, 13); or the words of the prodigal son: "Father, I have sinned" (Luke 15, 21).

In spite of this, when considered under the purely psychological aspect, the perverse will expressed in the culpable act can end in another way without attaining release from guilt. The culprit no longer thinks of his act, but he has not actually retracted it; it has simply ceased to weigh upon his conscience. Now, it should be clearly stated that such a psychological process does not constitute a release from guilt, just as falling asleep in the evening does not signify or obtain the removal, much less the suppression, of the evil committed during the day. Nowadays, some will perhaps say that the guilt has been submerged in the subconscious or the unconscious. But it is still there.

Nor would any better result be obtained with the attempt to suppress the psychological awareness of guilt by means of auto-suggestion or external suggestion, or even

by means of clinical psychotherapy, of psychoanalysis. A real, free, guilty will cannot be psychologically corrected or suppressed by insinuating the persuasion that it has never existed. We have indicated the deplorable consequences of a like treatment of the question of guilt in the discourse addressed to the members of the Fifth International Congress of Psychotherapy and Clinical Psychology, April 15, 1953.

A final observation must yet be made on this question of psychological liberation from guilt. A single, fully conscious and free act can contain all the psychic elements of a true conversion; but its depth, firmness and extent can present defects which, if not essential, are at least appreciable. A profound, extended and lasting liberation from guilt is often a lengthy process which only gradually reaches maturity, particularly if the culpable act has been the fruit of an habitual disposition of the will. The psychology of relapses offers more than sufficient material for proof on this point, and the supporters of the purifying, educative and fortifying function of a somewhat lengthy imprisonment find in these experiences a confirmation of their theory.

Juridical liberation from guilt, as distinct from the psychological conversion that is accomplished in the intimate will of the culprit, is directed essentially to the higher authority, whose requirements for observance of established norms have been slighted or violated. Private violations of legal rights, if they have occurred in good faith or otherwise, do not prejudice the common good, are settled privately between the parties or by means of a civil action. They are not ordinarily the object of penal law.

In the analysis of the culpable act, We have already pointed out that it constitutes the withdrawal and the negation of due subordination, due service, due devotion, due respect and homage; that it is objectively an offense against the loftiness and majesty of the law, or rather of the law's Author, Guardian, Judge and Vindicator. The exigencies of justice, and hence juridical liberation from guilt, require that as much service, subordination, devotion, homage and honor be restored to authority as were taken from that authority by the delict.

This satisfaction may be performed freely; it may also, in the suffering endured because of the penalty inflicted, be to a certain degree forced; it may at one and the same time be forced and free. Law in modern nations does not attach much importance to voluntary reparation. It is content to have the will of the culprit, by means of the penalty suffered, submit to the powerful will of public authority, and to re-educate his will in this way to work, to social relations, to right action. It is not to be denied that such a method of procedure can, by reason of immanent psychological laws, lead to an interior reform, and hence to an interior liberation from guilt. But that this must happen, or regularly does happen, is still to be demonstrated. In any event, not to take into consideration, as a matter of principle, the will of the culprit to give satisfaction insofar as sound juridical sense and violated justice require, is a deficiency and a lacuna, the bridging of which is earnestly demanded by the interests of doctrine and of fidelity to the fundamental principles of penal law.

However, juridical liberation from guilt comprises not only the will to perform the

required reparation but the actual reparation itself. Here science and the circumstances of concrete life are frequently confronted by a difficult question: what should be the rule in the event of moral or physical inability to perform such reparation? Must we recur to a sort of compensation or substitution, or may the exigencies of violated law be left without reparation?

We have already indicated that man, by means of a culpable act committed with full responsibility, is capable of offending or of destroying certain goods and juridical obligations; but after the fact he is often no longer in a position to provide adequate satisfaction. This is true in the instance of murder, of privation of sight, of mutilation, of full sexual violation, of adultery, of definitive destruction of another's good name, of the declaration of an unjust war, of the betrayal of state secrets, of certain forms of *lèse majesté*, and of other like delicts.

The law of retaliation would inflict a proportionate evil on the culprit. However, by this alone, the one injured in his rights would not receive reparation nor have his rights restored. But, prescinding from the fact that adequate indemnity is not impossible in all cases, it should be noted that judgment on the guilt regards not so much the damaged good of the other party, but principally the person of the culprit and his perverse will exercised to his own advantage.

In opposition to this is the offering or reparation made by the culprit at his own expense, from his personal being, property and ability, for the benefit of another, that is, in every case, of the violated law, namely, of the superior authority. Thus active reparation, which includes the interior conversion of the will, is for the culprit who, at his own expense, performs

the required satisfaction, the second of the two above-indicated elements which constitute liberation from guilt. The same cannot be said of purely passive reparation when the culprit is forced to bow beneath the suffering that this reparation implies. This purely passive satisfaction, from which any element of voluntary and repentant will is lacking, is thus deprived of the essential element of liberation from guilt. Consequently, the culprit remains in his culpable condition.

We have many times pointed out that every grave culpable act is in the last analysis an offense before God, Who has an absolute, because divine, right to obedience and submission, to service and praise, and Who as Author, Guardian, Judge and Avenger of the juridical order makes known to the culprit His exigencies with that unconditional absoluteness which is proper to the intimate manifestations of conscience. In the guilty resolution of the ego, man slights God Who thus reveals Himself, he leaves aside the infinite good, the absolute majesty, and in this way places himself by his action above God. But if man repents and returns to his proper subordination before the majesty of God, if, in conscious and complete surrender of his ego to the supreme infinite good, he separates himself from his culpable act in its deepest roots in order once again to be free in good and in his God, he nevertheless finds it impossible to make reparation by his own powers (that is, as derived from his own being, will and potency) in any proportionate fashion for that which he has committed in the sight of God by his act. He has offended and slighted an absolutely infinite good, an absolutely unlimited right, a supreme majesty. In the gravity of his fault

there thus intervenes this absolute infinity, while anything that man might offer or actuate is essentially, intensively and extensively, finite. Even were such reparation to endure until the end of time, it can never reach a stage of equality — *tantum quantum* — between the exigency of God and the offering or reparation of man.

God has bridged this abyss; He has put into the hands of finite man an infinite price; He has accepted as an offering of reparation for guilty man the ransom offered by Christ, which is super-abundant because it is of infinite value in submission, honor and glorification, by reason of its derivation from the hypostatic union. As long as time will endure, this ransom remits for repentant man his guilt before God through the merits of Jesus Christ.

Let it not be said that these theological and religious considerations lie outside the field and the interests of science and juridical practice. Doubtless a sharp distinction of competencies is an advantage to life and to any true science; but in this self-limitation one must not reach the point of denying or ignoring explicitly inseparable connections which by intrinsic necessity are manifested on every side. In every real offense — in whatever material field it may have taken place — there is contained a relation with the ultimate requirement of all law and of all order. It is a characteristic or prerogative of the world of law that there is nothing in it which in its fundamental structure has been created without this supreme requirement, or which in its final analysis can be made intelligible without this transcendent relation. In this there is no debasement, but rather an elevation of law and of juridical science, for which total laicization is an impoverishment, not an enrichment.

The ancient Romans united law and right (*ius ac fas*), notwithstanding the difference in concepts, and they always conceived them as related to the divinity. If now modern depth-psychology is correct, there is in the innate dynamisms of the subconscious and the unconscious a tendency which draws toward the transcendent and makes the essence of the soul gravitate toward God. The analysis of the guilt-process and of liberation from guilt reveals the same tendency toward the transcendent. This analysis brings forward considerations and aspects which the science and practice of penal law do not of course have to treat of directly, but about which they should have sufficient knowledge in order that others may make them useful to the end of the execution of the penalty and apply them to the advantage of the culprit.

Moral liberation from guilt coincides substantially for the most part with what we have already said concerning psychological and juridical liberation. It is the reprobation and withdrawal of the positive contempt and violation of the moral order committed by the culpable act; it is the conscious and voluntary return of the penitent culprit to submission and conformity with the ethical order and its obligatory requirements. There are comprised in these positive acts the endeavor and the offering of the guilty one to satisfy the just demands of violated law of the ethical order, or better, of the Author, Lord, Guardian and Vindicator of that order. And there appears the conscious will and resolution of the culprit to be faithful in future to the precepts of what is right and good. In its essential parts, then, this liberation consists in that interior disposition which has been indicated in the statement presented by you as the purpose and the fruit of the right

fulfillment of the penalty, even though it is here considered and circumscribed under a slightly different viewpoint.

Finally, by religious liberation there is understood liberation from that interior guilt which burdens and binds the person of the culprit in the sight of God, that is to say, before the supreme and ultimate requirement and necessity of all law and of every moral obligation, Who with His infinity covers and protects His will and His law, which has come forth, either immediately from Himself, or mediately from some legitimate human authority within the area of its own competence.

How man can free himself or be freed from his offense against God has been already sufficiently explained in the second point concerning the juridical aspect. But if this final religious deliverance is not manifested to the culprit, or at least if the way to such is not pointed out or made smooth — if only by means of a long and severe penalty — then in such a case very little, not to say nothing, is offered to guilty “man” in his punishment, however much one may talk of psychic cure, of re-education, of social formation of the person, or emancipation from aberrations and from enslavement to himself.

Doubtless these expressions mean something that is good and important; but for all that, man remains in his guilt before the supreme necessity upon which his final destiny depends. This necessity can wait and often does wait at length, but in the end it consigns the culprit to the guilt from which he is unwilling to desist, and to the consequences of that guilt. It is indeed sorrowful to have to say about a man: “It were better for that man if he had not been born” (Matt. 26, 24).

Therefore, if someone or something can

contribute toward warding off such an evil, even though it be penal law or the execution of a lawful penalty, no effort should be spared. All the more since God during this life is always most willing to effect a reconciliation. He incites man to accomplish internally the psychic withdrawal from his senseless act; He offers to welcome him once again, if he repents, into His friendship and His love. May human penal law, in its judgments and in the execution of those judgments, never forget the man in the culprit and never omit to strengthen him and assist him to return to God!

The return from the state of guilt and of punishment necessarily includes liberation not only from the guilt, but also from the penalty; only thus is there obtained that “*restitutio in integrum*,” as it were, a restitution to the original state or condition of non-culpability and hence of non-penalty.

Recent facts and statements suggest to Us at this point a brief declaration. Not every penalty that is incurred bears within itself its own remission. Revelation and the teaching authority of the Church establish clearly that, after the end of this earthly life, those who are burdened with grave guilt will receive from the Most High God a judgment and an execution of penalty from which there is no liberation or condonation. God could, in the next life, also remit such a punishment; everything depends on His free will; but He has never granted it and will never do so.

There is no point in discussing here whether this fact can be established with certainty by the force of reason alone — as some assert, while others consider it doubtful. But both opinions contain, in their arguments based on reason, considerations which indicate that such a divine disposi-

tion is in no way contrary to any of God's attributes: neither to His justice or His wisdom, neither to His mercy or His goodness. Furthermore, these considerations show that the divine disposition is by no means opposed to the human nature bestowed by the same Creator; with its absolute metaphysical finality directed to God, with the impulse of the human will toward God, with the physical liberty of the will rooted and ever permanent in created man.

All these reflections may perhaps leave in man, when he makes his judgments relying on his own reason alone, a final question, not so much about the possibility, but rather about the reality of such an inflexible decree of the Supreme Judge. Hence, it will not arouse too much astonishment if a noted theologian could write, at the beginning of the seventeenth century: "There are four mysteries of our most holy Faith which are most difficult for the human mind to believe: the mystery of the Trinity, of the Incarnation, of the Eucharist, and of eternal punishment" (Lessius, *De Perfectionibus moribusque divinis*, lib. XIII, cap. XXV).

Nevertheless, the fact of the immutability and the eternity of that judgment of reprobation and of its fulfillment is beyond dispute. The discussions which have arisen because of a recently published book (Giovanni Papini, *Il Diavolo*; Vallecchi, 1954) frequently portray a grave lack of understanding of Catholic doctrine, and they are founded on premises that are either false or falsely understood. In the present instance the Supreme Legislator, in the use of His sovereign and absolute power, has established the unending validity of His judgment and of its execution. Hence, this limitless duration is the law

now in force.

But let us now turn to the field of human law, which is the principal object of the present discourse. As We have already indicated, liberation from guilt and liberation from punishment do not always coincide. The guilt may come to an end and the penalty continue, and then on the other hand, the guilt may continue in force while the penalty terminates.

There are various forms of cessation of punishment. It is first of all clear that such cessation is reached automatically at the moment in which the penalty inflicted has been paid, or when the period of time originally set down has been passed, or else when its continuance (sometimes its very execution) was connected with a condition, either resolutive or suspensive, and this condition has been sufficiently fulfilled.

Remission is another form of cessation of the penalty, by means of an act of the competent higher authority. This may take the form of a favor, an indult or an amnesty, which is somewhat analogous in the field of religion to the "indulgence." The power to issue such acts of clemency does not rest with the judge who has pronounced the sentence of condemnation, applying to the individual case the penalty established in law. *Per se*, it resides with the power that judges and punishes in its own name and in virtue of its own law. Hence, the right to remit the penalty avails ordinarily in the life of the state as something reserved to the supreme authority. That authority can exercise this right by means of a general decree or by one concerned with an individual case.

Certain favors or mitigations in the execution of the penalty, which leave its substance unchanged, but which are granted to the culprit by reason of good

conduct or for other motives, are not included under the heading of remission or condonation. Besides, remission of the penalty in the proper sense is applied both to "medicinal penalties" and also to "vindictive penalties" where these latter are admitted.

The final stage of man's road through guilt and punishment leads anew to the problem, already mentioned several times, of the highest aim or object of the penalty, and particularly about the sense, or according to some, the non-sense, of a purely vindictive penalty.

In Our discourse of October 3, 1953, to the 6th International Congress of Penal Law, and also on the present occasion, We called attention to the fact that many, perhaps the majority, of civil jurists reject vindictive punishment. We noted, however, that perhaps the considerations and arguments adduced as proof were being given a greater importance and force than they have in reality. We also pointed out that the Church in her theory and practice has maintained this double type of penalty (medicinal and vindictive), and that this is more in conformity with what the sources of revelation and traditional doctrine teach regarding the coercive power of legitimate human authority.

It is not a sufficient reply to this assertion to say that the aforementioned sources contain only thoughts which correspond to the historic circumstances and to the culture of the time, and that a general and abiding validity cannot therefore be attributed to them. The reason is that the words of the sources and of the living teaching power do not refer to the specific content of individual juridical prescriptions or rules of action (cf. particularly Rom. 13:4), but rather to the essential founda-

tion itself of penal power and of its immanent finality. This, in turn, is as little determined by the conditions of time and culture as the nature of man and the human society decreed by nature itself. But whatever the attitude of positive human law on this problem, it is sufficient for Our present purpose to make clear that in any total or partial remission of punishment the vindictive penalties (no less than the medicinal) can and even should be taken into consideration.

Arbitrariness cannot prevail in the application of condonation. The good of the culprit, no less than that of the juridical community whose law he has culpably violated, must serve as a norm. Above both of these are the respect and excellence of the order established according to what is good and righteous. This norm requires, among other things, that, as is the case in the normal relations of men with one another, so also in the application of penal power, there be considered not only strict law and justice, but also equity, goodness and mercy. Otherwise there is danger that the "*summum ius*" be converted into "*summa iniuria*."

It is precisely this reflection which gives rise to the thought that, in medicinal penalties, and also, within certain limits, in vindictive penalties, a remission of the punishment should be taken under consideration whenever there is moral certainty that the inherent purpose of the penalty has been obtained, that is, the true interior conversion of the guilty person, and a serious guarantee of its lasting character. The regulations of Canon Law in this matter (cf. Canon 2248, paragraphs 1 and 2, and Canon 2242, paragraph 3) might serve as a model. These require, on the one hand, proof of the actual change

of mental attitude in the culprit, and, on the other, do not provide for any automatic condonation, but rather make it depend on a positive juridical act of the competent authority.

In the memorial presented by you, it is stated that civil penal law on this point makes a new development and a more elastic adaptation to modern exigencies appear desirable. This proposal may be good, although the requirements of civil penal law under various aspects differ from ecclesiastical penal law. In any event, the carrying out of any reform seems to require new theoretical clarifications and well-founded practical experimentation.

Along with the legal and technical aspect of liberation from punishment, the same memorial also mentions another, completely different, but very real, influence which is exerted upon the culprit, and which, being a more profound, intimate liberation from punishment, cannot be passed over in silence. Naturally it is less pleasing to professional jurists as such, although acceptable to them as "men" and "Christians"; it indicates an essential deepening or, one may prefer to say, a sublimation or "Christianization" of the entire problem of the execution of penalties.

Punishment is looked upon, by its very nature, as an evil imposed on man against his will; hence it creates of itself a spontaneous defensive attitude on the part of the interior man. He feels himself robbed of the free disposition of himself and subjected to an extraneous will. Similar evils, but arising from other sources, frequently affect man, or he may even choose them by his own free election. As soon as spontaneous opposition to the suffering no longer exists, its oppressive and humiliating aspect disappears or is substantially di-

minished, even though the sensitive and painful element remains. This we have already had occasion to point out in the second part of Our present exposition.

Very many people, even though innocent, are today thus oppressed and suffering; they suffer physically and morally in prisons and penitentiaries, in concentration camps, in places of forced labor, in mines, in quarries to which they have been relegated by political passion or the arbitrary whim of totalitarian powers. They suffer all the miseries and all the sorrows — and sometimes even more — that can be inflicted upon true culprits according to law and justice. Those who through no fault of their own suffer such evils are certainly not able to escape externally the pressure of force, but they can interiorly rise above all such things, sustained perhaps by naturally good moral motives, but much more easily and effectively by religious considerations, by the certainty that always and everywhere they depend on Divine Providence, which permits no person or thing to be taken from its grasp, and which — beyond the fleeting period of man's earthly life — possesses an eternity and an almighty power to set aright whatever has been unjustly suffered, to equalize again all things disarranged and hidden, to crush and punish all human tyranny.

To the eyes of the Christian, there is ever present Our Lord, Who in His Passion experienced all the depths of human suffering and tasted all its bitterness, and, in obedience to the Father, for love of Him and out of loving compassion for men, willingly took upon Himself sorrow and ignominy, the cross and death. Strengthened by the example of the God-man, many of these innocent victims find in their suffering interior liberty and peace, and attain an interior

liberation from sorrow, even while the external affliction endures, through the way of faith, of love and of grace.

Those who suffer through their own fault and feel themselves slaves of punishment may also attain the same end and by the very same way. We would wish to recall here what We have already said when speaking of the execution of punishment, concerning the spiritual circumstances of the person condemned to prison. Here We desire to consider how one can and should assist him to attain an interior victory and consequently an interior liberation from the evil of punishment. By faith and love and grace, clarity of vision and light can be imparted to his spirit, warmth and substance to his courage, strength and support to his weakness. Unquestionably the convicted person could himself bring to maturity and completion such an elevation; few, however, abandoned to their own devices, will be able to do so. They therefore need from others' advice, assistance, sympathy, encouragement and comfort. But the one who undertakes such a task must draw forth from his own convictions and his own interior riches that which he would communicate to the prisoner. Otherwise his words would be only sounding brass and tinkling cymbals (I Cor. 13, 1).

We have read with profound emotion what one of your members, the distinguished Professor Francesco Carnelutti, has written on the words which the Lord will pronounce at the end of time: "I was in prison and you visited me. . . . As long as you did it for one of these the least of my brethren, you did it for me" (Matt. 25, 36-40).

What is here proposed as the ideal in the gift of oneself for the spiritual salvation and purification of the prisoner goes beyond

the new precept of the Divine Redeemer "Love one another," which was to be the evident mark whereby His disciples would recognize one another (John, 13, 34-35); it is a question, in fact, of approaching the guilty one in such wise as to see, honor and love him in the Lord, and even so to liken oneself to him as to put oneself spiritually in the place of the man in convict's garb and detained in his prison cell, as the Lord says of Himself: I was in prison and you came to me (Matt. 25, 36): all of this interior world, this light, and this goodness of Christ can give the condemned prisoner support and assistance in order to come forth from the wretched servitude of punishment and acquire once again liberty and interior peace.

Furthermore the words of the Lord place an obligation not only on those who have the immediate care of the condemned person, but also on the community itself, of which he is and remains a member. The community should see to it that it is disposed to welcome lovingly the man who comes forth from prison into liberty. This love should not be blind but clear-seeing, and at the same time sincere, helpful and discreet, such as to make possible his re-adaptation to social life and a renewed consciousness of himself as free from guilt and punishment. The requirements of such a disposition are not based upon a utopian blindness to reality. As has been noted, not all criminals are ready and inclined to bear with the required process of purification — and perhaps the percentage of such is rather large — but it is still true that many others can be, and are assisted to obtain complete interior liberation, and for these especially no Christian effort will ever be too much or too difficult.

(Continued on page 125)