

## PRESUMPTION AS A MATTER OF LAW AND ETERNAL SALVATION

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### INTRODUCTION

In his screenplay, *A Man for All Seasons*, Robert Bolt provides the following dialogue between Master Secretary Thomas Cromwell and Sir Thomas More, the former Chancellor of England, who is on trial at the Hall of Westminster to answer the charge of High Treason for his refusal to sign an oath attesting to the supremacy of the King as Head of the Church of England:

**CROMWELL** Now, Sir Thomas, you stand upon your silence.

**MORE** I do.

**CROMWELL** But, Gentlemen of the Jury, there are many kinds of silence. Consider first the silence of a man when he is dead. Let us say we go into the room where he is lying; and let us say it is in the dead of night—there's nothing like darkness for sharpening the ear; and we listen. What do we hear? Silence. What does it betoken, this silence? Nothing. This is silence, pure and simple. But consider another case. Suppose I were to draw a dagger from my sleeve and make to kill the prisoner with it, and suppose their lordships there, instead of crying out for me to stop or crying out for help to stop me, maintained their silence. That would betoken! It would betoken a willingness that I should do it, and under the law they would be guilty with me. So silence can, according to circumstances, speak. Consider, now, the circumstances of the prisoner's silence. The oath was put to good and faithful subjects up and down the country and they had declared His Grace's title to be just and good. And when it came to the prisoner he refused. He calls this silence. Yet is there a man in this court, is there a man in this country, who does not know Sir Thomas More's opinion of the King's title? Of course not! But how can that be? Because

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this silence betokened—nay, this silence was not silence at all but most eloquent denial.

**MORE** (With some of the academic's impatience for a shoddy line of reasoning) Not so, Master Secretary, the maxim is "qui tacet consentire." The maxim of the law is "Silence gives consent." If, therefore, you wish to construe what my silence "betokened," you must construe that I consented, not that I denied.

**CROMWELL** Is that what the world in fact construes from it? Do you pretend that is what you wish the world to construe from it?

**MORE** The world must construe according to its wits. This Court must construe according to the law.

**CROMWELL** I put it to the Court that the prisoner is perverting the law—making smoky what should be a clear light to discover to the Court his own wrongdoing!

**MORE** The law is not a "light" for you or any man to see by; the law is not an instrument of any kind. The law is a causeway upon which, so long as he keeps to it, a citizen may walk safely.<sup>1</sup>

This essay argues that the Bishops of the Church must construe matters according to canon law, so that the Christian faithful may walk safely upon the path to salvation.

#### I. A CASE OF PRESUMPTION

In an article entitled, "Gotti, Mob Funerals, and the Catholic Church," in the *Journal of Catholic Legal Studies*,<sup>2</sup> Patrick J. Gordon asserted that Bishop Thomas Daily of Brooklyn "abused his discretion"<sup>3</sup> in denying John Gotti an ecclesiastical funeral Mass in accord with Canon 1184 of the *Code of Canon Law*, which requires "some signs of repentance before death" for "manifest sinners who cannot be granted ecclesiastical funerals without public scandal of the faithful."<sup>4</sup> The author based his conclusion on "a presumption that Gotti did repent, thus rendering Canon 1184 inapplicable."<sup>5</sup> Again, in Section II of his

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<sup>1</sup> ROBERT BOLT, *A MAN FOR ALL SEASONS* act 2 (1962) (some stage directions omitted).

<sup>2</sup> Patrick J. Gordon, *Gotti, Mob Funerals, and the Catholic Church*, 44 J. CATH. LEGAL STUD. 253 (2005).

<sup>3</sup> *Id.* at 254.

<sup>4</sup> CODEX IURIS CANONICI, c.1184, § 1 (Canon Law Society of America trans., 1983) [hereinafter CIC-1983].

<sup>5</sup> Gordon, *supra* note 2, at 255.

article, entitled, “The Law,” the author states his “presumption that John Gotti did, in fact, repent and thus was entitled to a funeral Mass.”<sup>6</sup>

On what basis does one presume repentance on the part of a convicted felon “serving a life sentence without parole on numerous charges, including racketeering, conspiracy to racketeer, murder in the aid of racketeering, operating an illegal gambling business, and witness tampering?”<sup>7</sup> Mr. Gordon refers to the “notions” of “redemption” and “forgiveness,”<sup>8</sup> however, there is no discussion of either the canonical or theological notion of “presumption” on which the author bases his conclusion.<sup>9</sup>

## II. PRESUMPTION IN CANON LAW

Canon 1584 defines “presumption” as “a probable conjecture about an uncertain matter; a presumption of law is one which the law itself establishes; a human presumption is one which a judge formulates.”<sup>10</sup> Since there is no statutory presumption established for ecclesiastical funeral rites, any such presumption would need to be established by the judge, in this case, the Bishop. Canon 1586 states, “The judge is not to formulate presumptions which are not established by law unless they are directly based on a certain and determined fact connected with the matter in dispute.”<sup>11</sup> The author offers no evidence of any such “certain and determined fact,” only his personal conjecture

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<sup>6</sup> *Id.* at 266.

<sup>7</sup> *Id.* at 253 (citing *United States v. Gotti*, 755 F. Supp. 1159, 1164–65 (E.D.N.Y. 1991)); see also Selwyn Raab, *John Gotti Dies in Prison at 61; Mafia Boss Relished the Spotlight*, N.Y. TIMES, June 11, 2002, at A1.

<sup>8</sup> Gordon, *supra* note 2, at 255.

<sup>9</sup> Mr. Gordon cites this author as the one “who made the decision” in 1986 to deny ecclesiastical funeral rites to the Spilotro brothers when their bodies were found in a cornfield near Chicago after having been beaten to death. *Id.* at 274. In fact, the decision was made by the Archbishop, the late Joseph Cardinal Bernardin. Mr. Gordon cites a newspaper article to conclude that Anthony Spilotro “had been connected to at least seven murders,” while saying that Michael Spilotro “was a good neighbor,” *id.* at 274 n.155 (citing Jack Houston & Ronald Koziol, *Spilotros Denied Church Funeral*, CHI. TRIB., June 25, 1986, at C1), who “was a ‘minor hoodlum’ at worst.” *Id.* at 274. In contrast, this author, acting as Vice-Chancellor of the Archdiocese of Chicago, made inquiries with local and federal law enforcement authorities to formulate his recommendation to the Archbishop that both men be denied ecclesiastical funeral rites.

<sup>10</sup> CIC-1983, *supra* note 4, c.1584.

<sup>11</sup> *Id.* at c.1586.

that “it seems highly unlikely that in all his time in prison John Gotti did not repent.”<sup>12</sup> Based on what?

As explained in *New Commentary on the Code of Canon Law*, “While presumptions constitute an ‘indirect’ rather than a direct form of proof, when properly used they are an important tool for discovering the truth and establishing moral certitude. The misuse of presumptions, on the other hand, can create serious problems by obscuring rather than revealing the truth.”<sup>13</sup> To presume a person’s repentance without any evidence of a “certain and determined fact” upon which to base such a presumption is to create just such a serious problem by “obscuring rather than revealing the truth” in the matter.

### III. PRESUMPTION IN CATHOLIC THEOLOGY

In theological terms, *Catechism of the Catholic Church* defines “presumption” as, “[a]n act or attitude opposed to the theological virtue of hope. Presumption can take the form of trust in self without recognizing that salvation comes from God, or of an over-confidence in divine mercy.”<sup>14</sup> *Catechism* further describes presumption as a “sin[] against hope”<sup>15</sup> when one “presumes upon God’s almighty power or his mercy (hoping to obtain his forgiveness without conversion and glory without merit).”<sup>16</sup> This is precisely the purpose of Canon 1184, namely, to guard against theological presumption whereby people assume that there are no eternal consequences for impenitent sinners, since God will forgive them anyway. Indeed, when Jesus commissioned the apostles, the crux of their preaching was to be the need for repentance.<sup>17</sup>

Perhaps the decline in Sunday Mass attendance and in the number of people going to the Sacrament of Penance (Confession) may be traced to an increase in presumption, that is, the feeling that such practices have no bearing on the question of one’s eternal salvation since, presumably, God’s forgiveness will

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<sup>12</sup> Gordon, *supra* note 2, at 255.

<sup>13</sup> Craig A. Cox, *Presumptions*, in *NEW COMMENTARY ON THE CODE OF CANON LAW* 1655, 1697 (John P. Beal, James A. Coriden & Thomas J. Green eds., 2000).

<sup>14</sup> *CATECHISM OF THE CATHOLIC CHURCH* 894 (2d. ed. 1997).

<sup>15</sup> *Id.* para. 2091, at 507.

<sup>16</sup> *Id.* para. 2092, at 507.

<sup>17</sup> *Mark* 6:12 (New American).

almost automatically trump one's unworthiness. Such a presumption, however, is not supported by Sacred Scripture, as seen in the Gospel's description of Jesus separating the "sheep from the goats" at the Last Judgment.<sup>18</sup> The latter, Jesus says, "will go off to eternal punishment, but the righteous to eternal life."<sup>19</sup> He stressed the necessity of repentance when He said, "if you do not repent, you will all perish as they did!"<sup>20</sup> Jesus gave the "keys to the kingdom of heaven" to St. Peter along with the power to "bind" and "loose" in heaven as on earth.<sup>21</sup> The Risen Lord then gave the power to forgive sins to His apostles when He appeared to them and said, "Receive the holy Spirit. Whose sins you forgive are forgiven them, and whose sins you retain are retained."<sup>22</sup> As successors of the apostles, Bishops exercise this same authority in their governance of the Church.<sup>23</sup>

#### IV. THE RULE OF LAW IN THE BISHOP'S GOVERNANCE OF THE CHURCH

Because of the enormity of this responsibility entrusted to the successors of the apostles, Canon 391, § 1 requires that, "[t]he diocesan Bishop govern[] the particular Church entrusted to him with legislative, executive and judicial power, in accordance with the law."<sup>24</sup> The *New Commentary on the Code of Canon Law* amplifies this, saying, "Every bishop is a minister of governance (c. 375, §1). . . . His power of governance, however, is not absolute or arbitrary: he must act 'according to the norm of law.'"<sup>25</sup> A shepherd of souls who acts according to whim or misuse of presumption rather than the rule of law places his flock at risk. Even a supposedly benign decision such as granting ecclesiastical funeral rites for manifest grave sinners who have given no evident sign of repentance is fraught with soteriological

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<sup>18</sup> *Matthew* 25:31–45.

<sup>19</sup> *Id.* at 46.

<sup>20</sup> *Luke* 13:5.

<sup>21</sup> *Matthew* 16:19.

<sup>22</sup> *John* 20:22–23.

<sup>23</sup> VATICAN COUNCIL II, *CHRISTUS DOMINUS: THE DECREE ON THE PASTORAL OFFICE OF BISHOPS IN THE CHURCH* para. 2, at 91 (1967).

<sup>24</sup> CIC-1983, *supra* note 4, c.391, § 1.

<sup>25</sup> John A. Renken, *Aspects of Bishop's Governmental Role*, in *NEW COMMENTARY ON THE CODE OF CANON LAW*, *supra* note 13, at 527 (quoting CIC-1983, *supra* note 4, c.391, § 2).

danger for the Christian faithful if it leads them to a false presumption of God's mercy without the need for repentance and conversion of heart. A shepherd of souls who governs according to canon law is much less likely to abuse his discretion and keeps his flock upon the "causeway" where, so long as they keep to it, the faithful may walk safely on their journey of faith.

#### CONCLUSION

Returning to Patrick Gordon's presumption that John Gotti had repented for his manifest sins prior to his death, it is clear that such a presumption is not supported in canon law. Thus, Bishop Thomas Daily of Brooklyn did not abuse his discretion in denying John Gotti an ecclesiastical funeral Mass, since he was acting in accord with the rule of law, specifically, Canon 1184, which requires "some signs of repentance before death" for "manifest sinners who cannot be granted ecclesiastical funerals without public scandal of the faithful."<sup>26</sup> Given the notoriety of John Gotti's crimes and the absence of any signs of repentance, Bishop Daily made the right decision.

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<sup>26</sup> CIC-1983, *supra* note 4, c.1184, § 1.