



An eye for an eye? The morality of punishment

by Christopher Townsend

*My object all sublime
I shall achieve in time –
To let the punishment fit the crime –
The punishment fit the crime.*

(Lord High Executioner in *The Mikado*)

towards a biblical mind

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Summary

The moral foundation of punishment is a problematic issue which has prompted several competing views. A biblical perspective is anchored in the principle of retribution: punishment is deserved in proportion to the seriousness of an offence. However, the biblical endorsement of retribution is qualified and carefully nuanced. The fundamental aim is not to inflict suffering on offenders but to reassert the existence of the moral order that governs human life. That moral order emphasises the connections between justice, right relationships and seeking after community wellbeing. For this reason, punishment should normally aim both at making reparation to victims and restoring offenders into the community. Taken together these priorities highlight shortcomings in our criminal justice system and suggest directions for reform.

Introduction

Punishment is a universal phenomenon. No human society confronted with infringements of its laws or customs leaves itself powerless to impose sanctions. For all this accumulated experience of dealing with offenders, punishment remains a problematic matter under constant debate.

At the turn of the century, the Gladstone Report of 1895 set the tone for penal policy, affirming that prison had a deterrent function and ushering in the 'rehabilitative ideal'. In 1910 the Home Secretary, Winston Churchill, expressed this ideal by encouraging 'a desire and eagerness to rehabilitate ... tireless efforts towards the discovery of curative and regenerating processes, and an unaltering faith that there is treasure, if only you can find it, in every man'.

This ideal had its heyday in the 1950s and 1960s but, in time, collapsed under the weight of sustained critique and practical observation. As C.S. Lewis trenchantly argued, the apparent benevolence of compulsory rehabilitation masked the potential for injustice.¹ How long must a petty thief be incarcerated before his habit of stealing has been 'cured'? Reviews of the general efficacy of treatment programmes in penal settings reached negative conclusions: the phrase 'nothing works' summed up the collapse of penal confidence.² In *Punishment and Modern Society* (1990) David Garland wrote:

'For nearly two decades now, those employed in prisons, probation, and penal administration have been engaged in an unsuccessful search to find a "new philosophy" or a new "rationale" for punishment. They have been forced to rethink what they do, and to reopen foundational questions about the justifications and purposes of penal sanctions, without so far having found a suitable set of terms upon which to rebuild an institutional identity' (p.6).

Why punish?

The philosophical debate has tended to focus on the issue of finding a moral justification for infliction of punishment by the state on individuals. This debate has been dominated by two broad schools of thought, the utilitarian and the retributive.

1 C.S. Lewis, 'The humanitarian theory of punishment' reprinted in *Undeceptions: Essays in Theology and Ethics* (1971).

2 The phrase was coined after a celebrated article by R. Martinson, 'What works? – Questions and Answers about Prison Reform', *The Public Interest*, 35 (1974). Martinson, in fact, never used this phrase and later asserted that 'some treatment programs do have an appreciable effect on recidivism'.

Utilitarians

The utilitarian tradition treats an act's good and bad consequences as its only morally significant features. For classical utilitarians, consequences are assessed by reference to people's mental state or happiness. Punishment is (normally) unpleasant for the offender and so, to quote Bentham, 'in itself an evil' only justified if outweighed by its positive effects. The right approach is to maximise the net benefits of the penal system for society, typically understood in terms of reducing the future incidence of crime. The method might be incapacitation (e.g. incarceration, removing a reckless driver's licence); general deterrence (i.e. deterring others from criminal activity); individual deterrence (i.e. deterring the offender from repeat offending) or rehabilitation (e.g. probation orders or psychiatric care). For utilitarians, parsimony is an important principle: to achieve a given reduction in crime the minimum hardship should be imposed on the person punished.

A utilitarian justification involves no essential link between crime and punishment. If our aim is to reduce crime, it is an open question whether a system of punishment should exist at all. Might not some other form of 'social hygiene' be more efficient? Furthermore, a strict utilitarian must contemplate the punishment of the innocent as an open moral option. After the commission of some heinous crime the punishment of an innocent scapegoat might be deemed necessary to maintain the deterrent effect of the law. Rawls's rule-utilitarianism (under which, broadly, rules which nearly always produce the best result should always be followed) claims to overcome this problem but depends on diverging from strict utility-maximising criteria.

The typical solution to these difficulties is a hybrid approach under which the pursuit of utilitarian aims provides the positive justification of a system of punishment but independent values act as constraints. For example, punishment might only be imposed if deserved for some past wrongdoing. Guilt would be a necessary (but not sufficient) condition for punishment. However, H.L.A. Hart, the most famous proponent of this approach, based his constraints on a concern for fairness and the maximisation of freedom, making no recourse to retributivist principles.³

Retributivists

A wide range of theories have been labelled retributivist but all try to establish an essential link between punishment and wrongdoing. Punishment is the morally right response to an offence in the past. In its pure form, this view holds that punishment should be imposed, regardless of whether any beneficial consequences will ensue. For Kant, punishment was linked to the categorical imperative that we respect persons as persons and, accordingly, ought to treat them as ends not means. Retribution owes its etymology to the Latin *retribuō*, 'I pay back', and conveys the idea that there should be an 'equivalence' between the punishment and the crime. However, given the conceptual problems associated with achieving such an equivalence, retributivists in practice argue that the severity of a penalty should merely be 'proportional' to the seriousness of the offence. By itself, this permits relative, but not absolute, degrees of punishment to be determined.

The justification for punishment is often stated to be simply that offenders deserve to be punished. An assessment of desert will take into account both the harm done and the offender's culpability. The focus on culpability is based, crucially, on the presupposition that people are morally responsible for their actions and requires the court to take account of mitigating factors or excuses such as diminished responsibility, duress or provocation. Critics argue that, whatever its intuitive appeal, this approach merely asserts an unargued claim that offenders deserve to suffer and provides no justification for the stronger claim that the state should inflict such suffering.

Retributivist theories can be traced to ancient times but have in the modern era tended to be viewed by students of penology as morally

and conceptually deficient. However, since the 1970s there has been a revival of 'modern retributivism'. An American report, *Doing Justice* (1976), launched 'just deserts' theory, in part as a reaction to excessive discretion over sentencing in the rehabilitative era: proportionality would limit punishment to the amount deserved and ensure that those guilty of similar crimes face a similar punishment. In *Doing Justice* retribution was not the sole justification for punishment, deterrence being an aim, but retributivist thinking was placed firmly on the agenda.

One approach adopted by modern retributivists is to justify punishment in terms of removing the unfair advantage an offender gains by his offence.⁴ The criminal law, by prohibiting anti-social acts, confers benefits on everyone in society but imposes the burden of compliance with the law. The offender gains an unfair advantage over law-abiding citizens by throwing off the burden of self-restraint. Punishment removes that unfair advantage and restores the equilibrium of benefits and burdens. Whether this theory can justify punishment in contemporary societies, given their skewed distribution of benefits and burdens, is controversial: how can there be just deserts in an unjust society? In any case, this theory relies on an unconvincing account of crime and inchoate offences. Many crimes are the result of unplanned violence, not a calculated attempt to secure a benefit; we do not envy child abusers for their illegal self-gratification but rather despise or perhaps pity them; attempted murder produces no unfair advantage and yet punishment seems appropriate.

There is, however, a different version of the retributive approach, which sees punishment as the community's way of repudiating or censuring the wrongdoer's actions and upholding the values society wishes to defend. Andrew von Hirsch, in moving away from the benefits-and-burdens approach, writes: 'Punishment connotes censure'.⁵ He anticipates that this will reinforce people's desire to be law-abiding. Even if it does not, 'the sanction should still express blame as an embodiment of moral judgements about criminal conduct'.

Communicators, denouncers, educators

Punishment does indeed have an expressive function, communicating in a symbolical fashion messages to the offender (condemning their deed), the victim (assuring them that society disavows the offender's deed and stands by the victim), and society at large (vindicating the law and reasserting the values it embodies).⁶ Communication may be a defining characteristic of punishment, but why communicate these messages, and why communicate in this way?

Lord Denning, commenting on capital punishment, stated that: 'The ultimate justification of punishment is not that it is a deterrent, but that it is the emphatic denunciation by the community of a crime.'⁷ Denunciation may be instrumental (e.g. intended to reduce crime by emphasising its wrongness and by fostering obedience to the law), or expressive (i.e. simply expressing society's condemnation, regardless of any impact on crime). In other words, behind denunciation appears to lurk either an essentially utilitarian or retributivist justification.

For others, punishment is intended to have an educative effect, either on the public or the offender. In the Court of Appeal in *R v. Serjeant* it was declared that the courts need not follow, could not ignore, but perhaps above all, had a duty to *lead* public opinion.⁸ Alternatively, punishment is seen as an endeavour aiming to bring the offender to realise the wrongness of their crime, and to establish in them a proper respect for the law and its values.

4 See, e.g., H. Morris, 'Persons and Punishment' in J.G. Murphy (ed.), *Punishment and Rehabilitation* (Belmont, 1973).

5 A. von Hirsch, *Past or Future Crimes* (1985), quoted in N. Walker, *Why Punish?* (OUP, 1991), p.78.

6 See, e.g., Joel Feinberg, 'The expressive function of punishment', in *Doing and Deserving* (Princeton University Press, 1970) and chapter 6 on 'Punishment' in R.C. Lucas, *On Justice* (OUP, 1980), esp. pp. 132-35.

7 E. Gowers, *Report of the Royal Commission on Capital Punishment*, Cmd 8932 (HMSO, 1953).

8 *R. v. Serjeant* (1970) 60 Criminal Appeal Reports, p.74.

3 H.L.A. Hart, *Punishment and Responsibility* (Clarendon Press, 1968). Note too, some accounts which see reducing crime as the basic justification of punishment are not utilitarian at all but based in human rights theory.

This differs from utilitarian rehabilitation which aims at obedience to the law by the humane methods most likely to succeed. Here, the offender is viewed as a responsible moral agent who should be persuaded to adopt a new moral outlook to undergird any change in behaviour.

A ceaseless debate?

There is, in short, a welter of differing views on the basic justification of punishment. Each has appealing elements; none is immune from telling criticisms. It is perhaps not surprising that traditionally the approach of the English judiciary has been unashamedly eclectic. Our task is to uncover whether an examination of the Bible's teaching on punishment can shed light on this debate, allowing us to discriminate between options and possibly lead us in new directions.

An eye for an eye?

It is not uncommon for Christians to cut the Gordian knot of this debate by affirming that the *lex talionis* ('an eye for an eye, a tooth for a tooth') expresses the biblical view of punishment. This principle supports the retributivist view: an offence calls for punishment and its severity should be determined by the offence committed, not by the criminal's characteristics or social policy objectives. Nonetheless, the principle had from the outset a social function, serving to limit the revenge which might otherwise be extracted in a blood feud (cf Genesis 4:24). An emphasis on desert, implicit in the *lex talionis*, is explicit elsewhere. If corporal punishment was to be administered, the guilty man was to receive 'the number of lashes his crime deserves' (Deuteronomy 25:3).

Some objections can be defused by a sensitive reading of the basic texts. When first stated, the principle is immediately followed by a creative application. A person who injured his servant was to let him or her go free as compensation (Exodus 21:23–27). Here was no charter for judicial mutilation: the aim was proportionate not imitative retribution, often by way of compensation or restitution. There are hints that the principle was flexible, as some passages forbid any reduction of the penalty (e.g. Deuteronomy 13:8, 19:13), suggesting that normally a certain latitude was available. Finally, it is anticipated that often punishment would have a deterrent effect: 'never again will such an evil thing be done among you.' (e.g. Deuteronomy 13:11).

From this material it appears that punishment should be imposed on an offender – normally and certainly no more than – in proportion to what their offence deserves. However, subject to this overriding principle, punishment may have other ends to serve, notably restitution and deterrence. Thus, for many Christians, the idea of retribution is the cornerstone of justice in punishment. Not a few, however, consider that retribution springs from a desire for revenge, that it sanctions state cruelty and is morally unacceptable.

Howard Zehr in *Changing Lenses* (1990) argues that a biblical conception of justice calls for a paradigm shift from 'retributive justice' to 'restorative justice'. Crime should be seen as a violation of people not rules; social factors should be given greater weight in assessing individual responsibility; the administration of justice should focus not on 'inquiry into guilt' but on 'a search for solutions'; sentencing should aim not at 'infliction of pain' but on 'making right'; justice should be based not on desert but on need; our aim should be not to maintain but to transform the status quo and to build *shalom*.

Timothy Gorringer's thesis in *God's Just Vengeance* (1996) is that over the centuries the satisfaction theory of the atonement has led to a cultural milieu that endorses the infliction of suffering. A proper grasp of the overall direction of the biblical texts, he argues, points away from such a doctrine. Historically, the church, particularly when part of the establishment, has tacitly – or expressly – supported harsh penal regimes. For Luther, magistrates were 'God's hangmen'. Now, he urges that 'the church, on the ground of its founding texts', should aim to deconstruct the ideology of retributivism and instead promote

'a conception of human life grounded not on violence, and the logic of an eye for an eye, but on forgiveness' (p.265).

These writers are wrong to deny a key role to retribution. However, as we shall see, their misgivings are not entirely misplaced. The principle of retribution in the Old Testament is derived from the natural phenomenon of blood-vengeance. The rights and duties of vengeance are transferred from the private to the public sphere when the human judge assumes communal responsibility for vindicating the victim's claim, as appears particularly in passages dealing with cities of refuge (e.g. Numbers 35; Deuteronomy 19). On the one hand, 'by giving judgement, and thus discriminating between innocence and guilt, and rewarding the offender proportionately to his offence, the judge transforms the originally blind and impassioned act of vengeance into an occasion for public disclosure of truth.' However, the 'derivation of retribution from the wrath of the injured party helps to explain the persistent ambivalence with which it is viewed. It can neither be dismissed nor absolutized, for it is a feature of human judgement which takes place under the broken social and cosmic conditions of the fall.'⁹

Such an evaluation of retributivism rightly pays no heed to the chestnut that Jesus countermanded the idea of 'an eye for an eye' in the Sermon on the Mount as there is a clear distinction between personal and public ethics. Yet it helps us to avoid uncritical enthusiasm for the concept of retribution. The Bible's teaching on punishment cannot, however, be reduced to an exposition of judicial vengeance. A broader canvas is filled and, in particular, its distinctive perspective builds on a theology of the state.

Punishment and the state

For the political philosopher the state usually acquires the right, or duty, to impose suffering on offenders by virtue of some form of social contract. Kant's autonomous man, acting as rational co-legislator in the formation of society's laws, consents in advance to punishment; the individuals in Locke's state of nature cede to the state their right to exact satisfaction from persons who harm them. The Old Testament, as we have seen, suggests a process whereby victims' 'rights' are adopted and endorsed by the community. By contrast, the New Testament unambiguously accords to the state a penal role which owes its origins to the divine ordering of human affairs.

The governing authorities are established by God and the one in authority 'is God's servant, an agent of wrath to bring punishment on the wrongdoer' (Romans 13:1,4). The person liable to punishment is 'the wrongdoer': the Greek present participle suggests habitual wrongdoing rather than a solitary offence. C.E.B. Cranfield comments that 'Through the state there takes place a partial, anticipatory, provisional manifestation of God's wrath against sin'.¹⁰ It is partial (no sin escapes God's judgement but the state punishes certain outward actions and apprehends only some offenders); anticipatory (foreshadowing a future day of judgement); and provisional (no human tribunal can evaluate with precision an individual's moral guilt). None of this is to say that all penal action by the state is legitimate – moral constraints must limit, and practical considerations influence, how and when the state exercises its unique authority. For the authorities, as God's servants, are accountable to him and, in Calvin's words, do not 'have unbridled power but power that is restricted to the welfare of their subjects'.

For Christians punishment has a 'vertical dimension' ignored by secular accounts. Indeed, Christians have a coherent explanation for the persistent intuition that the guilty deserve to be punished, an intuition which secular writers find hard to justify. The fact that pagan Rome could serve as an agent of God's wrath indicates that even a penal system untutored by Christian thought can serve valid purposes. If punishment by the state – when imposed on the wrong-

9 O.M.T. O'Donovan & R.J. Song, 'Punishment' in S.B. Ferguson *et al* (ed.), *New Dictionary of Theology* (IVP, 1988), pp.458–59.

10 C.E.B. Cranfield, *The Epistle to the Romans*, International Critical Commentary, vol. II (T&T Clark, 1979).

doer – is a manifestation of God's wrath, such punishment should serve as a 'public disclosure of truth', a reminder of the moral order that governs human life and our ultimate moral accountability.

The Old Testament counterpoint to Romans 13 is, perhaps, the role of the king as supreme judge after the monarchy is established. The king is the personification of the state and the ideal he was meant to fulfil was articulated in the opening words of the coronation psalm, Psalm 72:

*Endow the king with your justice, O God,
the royal son with your righteousness.
He will judge your people in righteousness,
your afflicted ones with justice.*

Notwithstanding the Messianic overtones of this psalm, it reinforces the impression that human government when punishing should echo in some respects the qualities of divine justice.

Divine justice

Justice, wrath and mercy

The wrath of God is the personal reaction of a holy God to human sin, an indispensable aspect and expression of God's righteousness. The wrath of God is never cruel or capricious but always the action of God as judge, punishment administered to maintain justice. God, while already active in judgement, often refrains from exacting due punishment now in the hope that his patience will lead us to repentance (Romans 2:4). However, on '...the day of God's wrath, when his righteous judgement will be revealed. God "will give to each person according to what he has done"', resulting in eternal life for some and wrath for others (Romans 2:5–11; cf Revelation 20:11–15). Texts such as this led J.I. Packer to state that 'when the New Testament speaks of the final judgement it always represents it in terms of retribution.'¹¹ There will be degrees of punishment (e.g. Matthew 11:22, 24), and culpability will be assessed according to how much a person knows of God's will (see, e.g., Romans 2:12, Luke 12:47 ff). But, while judgement at God's hands is bitter and painful, the Bible insists that God takes no pleasure in the death of a sinner (Ezekiel 33:11, 2 Peter 3:9). Moreover, not one person condemned on that last day will be able to impugn God's justice – every mouth will be silenced (Romans 3:19).

We must, however, integrate all this with the great truth that salvation comes 'by grace ... through faith ... not by works' (Ephesians 2:8). We are all 'by nature objects of God's wrath' but believers escape deserved judgement because God, rich in mercy, saves us by grace (Ephesians 2:3–4). A Christian's deeds do not merit salvation but they are weighed to provide evidence of his inward allegiance to Christ (Matthew 25: 34ff) and to assess their faithfulness in serving Christ (2 Corinthians 5:10). Yet, the New Testament insists that salvation arising from God's mercy in no way renders God unjust. How is this?

Paul's triumphant claim in Romans is that 'a righteousness from God' has arrived (Romans 1:17, 3:21). The three main meanings ascribed to this phrase have been: in the medieval tradition, God's justice (as in vv.25–26); according to the Reformers, a righteous status bestowed by God, in a word, justification; and according to some modern scholars, God's dynamic, saving activity (a view based on OT passages, such as Isaiah 45:21 where 'God's righteousness' and 'God's salvation' are synonyms).¹² While the second is almost certainly correct (the righteousness of God is the righteous standing which God gives to those who believe in Jesus), the others may enrich our overall understanding (this gift is only available because of God's dynamic saving activity and the whole operation is consonant with God's justice).

God's mercy is consistent with his justice, first, as there is at least a hint that mercy is an aspect of divine justice. Secondly, through

Christ's atoning sacrifice God 'demonstrate[s] his justice at the present time, so as to be just and the one who justifies those who have faith in Jesus' (Romans 3:26). Christ's death on the cross satisfied the demands of God's justice in full. He bore our sins in his own body and broke the iron logic by which guilty sinners must face retribution at the hands of a holy God. That the cross 'demonstrates' God's justice is revealing: justice must be seen to be done and the broken moral order must be reasserted.

Justice, relationships and social harmony

Judgement in the New Testament is by no means always described using metaphors drawn from the courtroom. The presence or absence of a relationship with Christ is the touchstone of divine judgement; the issue is whether we are 'in Adam' or 'in Christ'. It is not necessary for us (as some do) to infer that the language of retribution in the New Testament is merely intended to emphasise that God's judgement is never arbitrary.¹³ A synthesis might build on the organic links existing between whether we know Christ, what we are and what we do. Indeed, as has been suggested, it may be appropriate to understand justification not merely as a forensic action but as 'rectification' of a broken relationship, given the OT background to the word righteousness (*dikaioσύνη*).

In the Old Testament *tsedeq/tsedeqah* are the words usually translated as 'righteousness' or 'justice'. The root meaning is 'straightness' in a physical sense and implies conformity with a norm, but the word develops over time a richer texture. Arising from the idea that God's righteousness is his intervention on behalf of his covenant people (1 Samuel 12:7), and his people's righteousness is their loyal obedience to him, the essential idea emerges that righteousness is the fulfilment of the demands and obligations inherent in a relationship between two persons.¹⁴ The companion to righteousness/justice (*tsedeq*) is justice-in-action (*mishpat*). In C.J.H. Wright's words '*Mishpat* is what needs to be done in a given situation if people are to be restored to conformity with *tsedeq/tsedeqah*'.¹⁵ In a human context *mishpat* has a wide semantic range and can refer to a legal ordinance, a person's cause of action, the process of litigation, the verdict which emerges, and execution of that verdict. There is, finally, an intimate connection between *tsedeq* and *shalom*, for as the Psalmist tells us 'righteousness and peace kiss each other' (Psalm 85:10). *Shalom*, usually translated 'peace', comes from a root meaning 'to be complete' and conveys a sense of the wholeness, harmony, fulfilment in the community which God desires. This is the fruit of *tsedeq*, things and people as they ought to be, the all-rightness God intends. In short, 'righteousness and justice in Old Testament thought are not abstract ideas. They are highly personal and relational terms.'¹⁶

Punishment, justice and community

An examination of OT Israel's penal provisions affords an indication of how some of the values which distinguish the biblical conception of justice from simple retributivism can find their expression in a human society. Indeed, OT Israel is offered by the Bible as a paradigm or model from which ethical and practical insights may with due care and sensitivity be drawn and applied to other societies.¹⁷ The backdrop to OT Israel's penal code was a blueprint for social life which, though little achieved in practice, sought to foster substantial economic equality, family cohesion and moral education. The administration of justice emphasised community participation: alleged offenders were brought to trial by the victim, a relative or an eye-witness, rather than public prosecutors;

13 See, e.g., S. Travis, *Christ and the Judgment of God* (Marshall, Morgan & Scott, 1986).

14 See, e.g., W. Eichrodt, *Theology of the Old Testament* (1975), vol. I, pp.240–41.

15 C.J.H. Wright, *Living as the People of God: The relevance of Old Testament Ethics* (IVP, 1983), p.134.

16 *Ibid.*, p.135.

17 The idea of OT Israel as a paradigm is explored in *ibid.* and in several papers published by The Jubilee Centre, Cambridge.

11 J.I. Packer, *Knowing God* (Hodder & Stoughton, 1973) p.158.

12 J.R.W. Stott, *The Cross of Christ* (IVP, 1986), pp.208–10.

matters were often settled at the town gate by community elders. In terms of punishment, three prominent themes which emerge are now considered.

Reparation

For many offences, particularly theft and personal injury, OT law required the offender to make restitution (e.g. Exodus 22:1,4). As between offender and victim, justice had to be restored. Atonement for a wrong done to another person involves, so Richard Swinburne argues in *Responsibility and Atonement* (1989), repentance, apology, reparation and 'penance', which together aim to remove, so far as possible, an action's malevolence and harmful results. In a penal context, reparation might typically be exacted by compulsion and should include compensation for the wrongdoer's malevolence which has not been addressed by apology or penance. Hence, the Old Testament's requirement that reparation after theft should involve paying back more than the amount stolen. To make the victim 'whole', to restore relations in formal terms, helps to build a just community. Notably, the Hebrew for restitution (*shillum*) is derived from the same root as *shalom*. Restitution was so important that a thief who had nothing was to be sold to pay for his theft: he became the tied servant of the injured party for up to seven years or was, possibly, sold to a third party who would give a sum of money to the victim (Exodus 22:3, Deuteronomy 15:12-15).

Reintegration

The extent of capital punishment in OT Israel is sometimes regarded as problematic. However, OT Israel resorted to capital punishment only after the stringent evidential requirements had been satisfied: two eye-witnesses were needed (Deuteronomy 19:15). In OT Israel, unlike Mesopotamia, no property crime ever warranted this ultimate sanction. Human life was always more precious than mere property. Even so, OT Israel was prepared through capital punishment to carry out the permanent removal of an offender from the community.

Nonetheless, a key feature of OT Israel's penal code is that normally punishment, whether by restitution or corporal punishment, involved no severing of family or community links. The principles governing corporal punishment involved respect for the offender: he was a 'brother' whose punishment must be limited to ensure he did not become 'degraded in your eyes' (Deuteronomy 25:1-3). There are hints here of 'reintegrative shaming', a process which John Braithwaite claims is the hallmark of successful crime reduction strategies, and requires expressions of community disapproval to be followed by gestures of reacceptance into the community of law-abiding citizens.¹⁸ This contrasts with disintegrative shaming, or stigmatization, which divides a community by creating a class of outcasts.

The form of punishment conspicuous by its almost complete absence from OT Israel is imprisonment. Manslaughter led to temporary exile in a city of refuge until the high priest's death. Apart from this, compulsory exclusion from community life for a period was not practised, an omission which invites a critical re-examination of the role prison plays today.

The NT practice of excommunication sheds interesting light on these themes of removal and reintegration. C.K. Barrett, commenting on 1 Corinthians 5, notes: 'Any community inculcating moral standards ... is bound to recognise a degree beyond which transgression of its code becomes intolerable because destructive of the foundations on which the community itself rests, so that exclusion becomes necessary.'¹⁹ However, in 2 Corinthians 2, possibly a sequel, Paul urges the Corinthians in relation to someone who has been disciplined: 'reaffirm your love for him' (v.8). If punishment is to be part of a process whereby a person is restored fully to the life of the community, the community will need to demonstrate its reacceptance of the erstwhile offender.

Reformation

OT Israel's penal code contains no express references to seeking to reform an offender. However, in some cases, penalties appear to 'fit' the crime and so serve to communicate something about the nature of the offence. Studies suggest that a factor behind offending behaviour is an inability to grasp the impact of such behaviour on others, a lack of empathy for victims. Double repayment for theft, for example, forces the offender to stand in the victim's shoes, suffering a loss equal to the victim's loss at their hands (Exodus 22:8). In God's dealings with Israel, when he punishes his people, his long-term goal is to foster a renewed commitment to himself (e.g. Hosea 5). Similarly, where God intervenes to judge individuals, an accompanying dialogue may seek to sensitise the culprit to the true character of his deed (e.g. God's interaction with Cain in Genesis 4:9-12) and so prompt repentance (e.g. Nathan's visit to David in 2 Samuel 12:1-12). In short, there is wide-ranging, if indirect, support for the principle that punishment, particularly if tailored to the offence, can serve as an element in an offender's moral illumination and, thus, reformed behaviour.

Punishment: a biblical synthesis

Our discussion prompts the conclusion that a biblical account of punishment must be anchored in an understanding of retribution which seeks to communicate moral truth by censuring wrongdoing. Punishment must be just and the fundamental aim should be not to impose suffering on offenders but to reassert the broken moral order which lies behind any defensible code of law. Such an endeavour may on occasions allow the setting aside of strict proportionality, thereby providing a pale reflection of the mercy present in a fully-rounded characterisation of divine justice. Indeed, where an offender demonstrates genuine remorse, their acknowledgement of the deed's wrongness helps to communicate moral truth. Punishment must be seen to be just and great pains should be taken to ensure, so far as possible, that the entire process of trial, sentencing and punishment is free from grounds for legitimate complaint by those punished: free, that is, from the taint of injustice.

While punishment is determined by retributive principles in that desert should govern, or in any event set an upper limit on, the degree of punishment which may be imposed, punishment must be 'consequence-sensitive'. More than this, punishment administered justly pays heed to the importance of maintaining, or restoring, relationships in society characterised by justice, mutual respect and, wherever possible, full participation in community life. Thus, punishment should acknowledge the place of the victim and in many cases will demand reparation by wrongdoers. For offenders, the aim, in most cases, will be full readmission on equal terms into the community's life.

Punishment today

The biblical perspective on punishment summarised in this paper can provide a basic orientation in assessing policy issues in the penal system. Naturally, applying such a perspective to a modern, largely urban society with an increasingly plural culture is a complex matter. A burgeoning criminological literature bears witness to the diversity of people, situations, factors and issues which penal policy must address. Further, punishment cannot be viewed in isolation from the distinct but related matters of judicial process, crime prevention strategies, social justice and welfare concerns. Our aim here is briefly to explore a limited selection of shortcomings in our penal system and possible ideas for constructive change.²⁰

Sentencing: While judicial discretion can lead to inconsistency and, hence, injustice, sentencing guidelines are a more appropriate

18 J. Braithwaite, *Crime, Shame and Reintegration* (CUP, 1989).

19 C.K. Barrett, *The First Epistle to the Corinthians* (A & C Black, 1971), p.123.

20 Statistics quoted below are drawn from M. Cavadino & J. Dignan, *The Penal System* (2nd edn) (Sage, 1997). Policy ideas sketched here are considered more fully in J. Burnside & N. Baker (eds), *Relational Justice* (Waterside Press, 1994) and *Relational Justice: A reform dynamic for criminal justice* (Jubilee Policy Group, 1994).

response than the mandatory sentences favoured for some offences by Home Secretary, Michael Howard. Meanwhile, unemployed and black people are exposed to some likelihood of more punitive sanctions than others for the same offences, indicative in many cases of a bias which has nothing to do with assessing deserts and which needs to be remedied.

Using prisons less: The prison population in England and Wales has risen from 39,280 in 1975 to 55,851 in July 1996 and is projected to rise further. We are told 'prison works' and an extensive prison-building programme is planned. Yet, in many cases, it is doubtful whether imprisonment is the most suitable punishment. The majority of prisoners have committed offences involving no violence and are not obviously a threat to public safety. Imprisonment is expensive (an average of £437 per week per offender in 1993/94, nearly 20 times more than community service). Imprisonment can lead to unmerited hardship for dependants, place great stress on family relationships, result in permanent job loss, and multiply contacts in the criminal world. Moral and pragmatic arguments suggest we should use prisons less.

Better prison regimes: Imprisonment will remain part of the penal scene and for some offenders is the only realistic option. For most prisoners, prisons should be run as 'pre-release centres'. Offering prisoners productive, properly paid work should be explored so that they can make payments to their victims – and their own families. Prison is a form of temporary exile. This could be ameliorated by establishing 'community prisons' close to prisoners' homes as Lord Woolf recommended, by building better links between prisons and communities, by permitting more meaningful visits, and by introducing community reintegration programmes.

Non-custodial punishments: In 1994 18 per cent of indictable offenders in England and Wales were imprisoned, 25 per cent given supervisory sentences (e.g. probation orders, community service orders) and 57 per cent non-supervisory penalties (e.g. fines). Increasing further the use of non-custodial penalties is hampered by rhetoric from Westminster, established habits on the Bench, and public perception of non-custodial penalties as a 'soft option'. Changing this would require sustained political effort, increased

resources to provide adequate supervision, and ongoing research to develop and assess methods and results. So too would attempts to promote reparation (see below).

Reparation: In 1994 orders to pay compensation were imposed on only 22 per cent of indictable offenders in magistrates' courts and 9 per cent in the Crown Court. Frequently, the offender's lack of means stood in the way of making such an order. There is scope for increased use of reparation in kind (or community service as a form of 'displaced reparation'). A few schemes (typically associated with diverting young offenders from the courts) already exist; many more could be developed.

The role of the victim: If justice is to be done as between victim and offender, the knotty question of victim participation in the process from arrest to sentencing needs careful examination. Direct or indirect communication between victim and offender, as offered by mediation schemes, can help sensitise offenders to the hurt crimes cause to a fellow human being, and help victims work through their often varied reactions to an offence.

Policy towards offenders has been growing more punitive since the 1970s. Political calculation has been a factor but so have deeper social trends. Braithwaite has argued that the ideology of individualism, and one might add features of modern economic life, have been eroding the informal sanctions which intermediate social networks can apply to anti-social behaviour. It is tempting to baulk at the uphill task of reinvigorating those social networks, not least by harnessing community resources in responding to crime, and resort instead to the coercive apparatus of the state. Winston Churchill's oft-quoted words that the 'mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country' may be true in more ways than he had in mind.

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