

VIOLENCE AS A ‘THEOLOGICAL’ PROBLEM

by Ted Grimsrud

We live in a world where too many people ‘purposefully contribute to the harm of another human being, either by action or inaction’ (my working definition of violence). In such a world, an unavoidable moral question arises, how do we *respond* to violence, how do we respond to evil?

Despite widespread occurrences of inter-human violence, the case may be made that most human beings tend to want to avoid lethal violence toward other human beings. If this were not true, the human race could never have survived to evolve to the point it has. In human experience people need some overriding reason to go against the tendency to avoid lethal violence. To act violently, especially to kill other human beings, is serious business, undertaken because some other value overrides the tendency not to be violent. Almost all violence emerges with a rationale that justifies its use. Psychiatrist James Gilligan, who worked in the criminal justice system for many years, argues, based on his extensive work with extremely violent offenders, that even the most seemingly pointless acts of violence usually have some justification in the mind of the perpetrator.¹

Other more obviously rational uses of violence (for example, warfare, capital punishment, corporal punishment of children) generally follow a self-conscious logic. At the core of this ‘logic’ rests a commitment to the necessity of *retribution*. When the moral order is violated by wrongdoing, ‘justice’ requires retribution (that is, repayment of violence with violence, pain with pain).

The legitimacy of retribution is widely accepted in the United States. Where does this belief in retribution come from? One key source is Christian theology, the belief that retribution is God’s will, or that the need for retribution stems from the nature of the universe. That the nature of the universe requires retribution is a part of what most Western Christians believe, leading to strong support for retribution (that is, for justifying violence as the appropriate response to violence).

The logic of retribution

A theological framework called ‘the logic of retribution’ underlies many rationales for the use of violence. The logic of retribution understands God most fundamentally in terms of impersonal, inflexible holiness, seeing God’s law as an unchanging standard for morality.

This framework understands human beings to be inherently sinful. God responds to sin with punishment. We justify violence as being an expression of this deserved punishment (that is, inflicting pain in response to wrongdoing). God wills such punishment. God’s holiness means that God cannot countenance sin; if God has direct contact with sin, God must destroy it.

The evangelical theologian, Millard Erickson, articulates this position in terms that echo epoch-shaping theologians such as Augustine, Anselm, Luther, and Calvin: ‘The nature of God is perfect and complete holiness. This is ... the way God is by nature. He has always been absolutely holy Being contrary to God’s nature, sin is repulsive to him. He is allergic to sin, so to speak. He cannot look upon it.’²

Erickson directly follows John Calvin in how he articulates this view. Calvin wrote in his *Institutes of the Christian Religion*, ‘there is a perpetual and irreconcilable disagreement between righteousness and unrighteousness’ (II.xvi.3). Hence, Christ has ‘to undergo the severity of God’s vengeance, to appease his wrath and satisfy his just judgment’ (II.xvi.10).³

Human beings have been given laws from God that tell us what we must avoid doing in order to keep us from violating God’s holiness. When humans violate those laws, we sin against God himself. Erickson writes, ‘The law is something of a transcript of the nature of God. When we relate to it, whether positively or negatively, ... it is God himself whom we are obeying or disobeying. Disobeying the law is serious ... because disobeying it is actually an attack upon the very nature of God himself.’⁴ When human beings violate God’s holiness, our sin makes God angry. God must (due to God’s holiness) punish sin.

According to the logic of retribution, inflexible holiness governs God’s behavior. Human beings invariably violate that holiness. God may not freely act with unconditional mercy and compassion toward rebellious human beings. Simply to forgive would violate God’s holiness. ‘For God to remove or ignore the guilt of sin without requiring a payment would in effect destroy the very moral fiber of the universe, the distinction between right and

wrong.’⁵ Justice works to sustain the balance of the universe. If human beings upset the balance, justice requires recompense to restore the balance. We make this payment through punishment, pain for pain.

In much Christian theology, the doctrine of the atonement enters here. Due to the extremity of the offences of human beings versus God’s law, God can relate to human beings only if there is death on the human side to restore the balance. This happens through the death of God’s own son, Jesus, whose holiness is so powerful that it can balance out the unholiness of all of humanity.

Jonathan Edwards, for example, wrote that the crucifixion of Jesus ‘was willed and ordered by God’ and was ‘the most admirable and glorious of all events’ because only in this way could human beings be granted salvation.⁶ Human beings, when they confess their own sinfulness, may claim Jesus as their saviour from God’s righteous anger. Jesus satisfies God’s retributive justice (pain for pain) on our behalf.⁷

Within the logic of retribution, salvation achieved as the result of violence is consistent with the basic nature of the universe as founded on impersonal holiness. Salvation happens because the ultimate act of *violence* – the sacrificial death of Jesus Christ – satisfies God’s holiness. In this view, it is part of God’s plan that God’s own Son be violently put to death.

In light of this understanding of the nature of God and of the fundamental nature of the universe, the logic of retribution leads to acceptance of ‘justifiable violence.’ Violence may be the best response to violence.

Retributive responses to crime⁸

Let us look more closely at one particular expression of retributive violence, the dynamics of criminal justice. Criminal justice is only one issue among many where the logic of retribution exerts a major influence – but it may be the most obviously shaped by this logic. Punishment involves the intentional infliction of pain; it is a form of violence. Punishment, then, requires justification as it involves the state acting violently, something normally considered morally and socially unacceptable.

In the Western criminal justice tradition, overriding justifications for harsh punishments, even to the point of death, continue to be tied to an understanding of reality requiring retributive justice because fundamental laws are violated. Such ‘retributive justice’ restores the moral balance.⁹ Given the religious roots of Western culture, this understanding follows

from a particular understanding of God: retribution is needed to ‘satisfy’ God’s will that violations be paid for with pain.

So, in the arena of criminal justice, the issue of authorized human beings inflicting pain (including death) on other human beings is a theological issue. I use ‘theology’ in a broad sense to refer to beliefs about ultimate reality, foundational beliefs about the nature of the universe and ‘God’ as the common human name for ultimate reality.¹⁰

The close connection between Western political philosophy and Christian theology dates back to the early fourth century with the first ‘Christian’ emperor, Constantine, and was given powerful theological grounding in the work of Augustine at the end of that century.¹¹ This connection grew as Western concepts of justice were decisively shaped during the Middle Ages through an interaction between Christian theology and newly emerging concepts of law. The theology/law interaction deeply influenced Western culture as a whole and helped to reinforce a retributive view of justice.

Retributive theology has infused the social, political, and cultural life of the West in fundamental ways, going back not just to the medieval period but into antiquity. Timothy Gorringer makes a strong case for the atonement theology of Anselm of Canterbury (c.1033-1109) providing a crucial link in applying this view of God to the practice of punitive criminal justice.¹² However, the roots of such an application of these theological themes go much further back to the infusion of Greek philosophy and Roman political thought into Christian theology, fostered especially by the extraordinarily influential writings of Augustine of Hippo.¹³

The key impact Greek philosophy had on theology may be seen in emerging notions of God’s impassivity, the growing abstraction of concepts of justice, and the objectifying or ‘othering’ of offenders (in Augustine’s case – and in the following generations – especially the objectification of ‘heretics’, providing the basis for their severe punishment).

Acknowledging these older antecedents, I will focus here on the Middle Ages, sketching the impact of retributive theology on the criminal justice practices of the West.¹⁴ In the early Middle Ages, the church, struggling with the state for dominance of European society, utilized the law of the later Roman Empire as its instrument for solidifying its authority. It merged its theology with this newly rediscovered legal system to create canon law. Secular authorities, in their turn, followed suit.

The Greek-influenced theology provided a notion of God's impersonal holiness and retributive response to violations of that holiness. This theology merged with Roman legal philosophy, also centered on impersonal principles. Instead of being based on custom and history, law in this perspective stood alone.

Roman law was written law, based on principles that were independent of specific customs ('transcendent,' to use theological language). As embraced by the medieval church in its canon law, it had an accompanying method for testing and developing law (that is, scholasticism). Roman law, therefore, could not only be systematized and expanded but also could be studied and taught transnationally by professionals. This universal character helps explain its appeal and almost immediate spread to universities throughout most of Western Europe.

From the base of Roman law, the church built an elaborate structure of canon law, the first modern legal system. This revolutionary development provided the papacy with an important weapon in its struggle. By providing for prosecution by a central authority, the church established a basis for attacking heresy. The extreme expression of this new approach was the Inquisition in which representatives of the Pope ferreted out heretics and tortured them.¹⁵ No longer was the individual or local community the primary victim of crime. In the Inquisition, it was an entire moral order that was the victim, and the central authority (that is, the Church) was its guardian. Wrongs were no longer simple harms regarding redress. They were sins requiring retribution. God's holiness, understood in terms of retributive theology, necessitates punishment carried out by the human agents of God's will.

Punitive practices following from such retributive logic, diverged from earlier approaches. In the early church, wrongs were seen as wrongs against persons. In Matthew 18, for instance, wrongdoers are to make it right to the victim, then the obligation is loosened in heaven. In the medieval understanding, wrongs came to be seen as against the impersonal moral order. The representative of that order was a legalistic, punishing figure. God took the place of the victim, and salvation became a matter of appeasing an angry God.¹⁶

God's punishment was portrayed as so awful that attention needed to focus on saving the sinner from punishment, leading to ignoring the needs of the victim. This theology – as with the emerging legal system – focused on dealing with the offender.

Justice became a matter of applying rules, establishing guilt, and fixing penalties – without concern for finding healing for the victim or the relationship between victim and offender. Crime was a sin, not just against a person but against God, and it was the church’s business to purge the world of this transgression. From this understanding of sin, it is a short step to assume that as the social order is willed by God, crime is also a sin against this social order. The church (and later the state) must therefore enforce that order. Increasingly, focus centered on punishment by established authorities as a way of doing justice.

By the end of the 16th century, the cornerstones of state justice were in place in Europe, and they drew deeply from the underpinnings of retributive theology. Criminal codes began to specify wrongs and to emphasize punishment. Enlightenment thought and post- Enlightenment practice increased the tendency to define offences in terms of lawbreaking rather than actual harms. If the state represented the will and interests of the public, people could more easily justify defining the state as a victim and giving up to the state a monopoly on intervention. Enlightenment thinkers instituted more rational guidelines for administering pain. They also introduced new mechanisms for applying punishment.

The primary instrument for applying pain came to be the prison. Part of the attraction of prison was that one could grade terms according to the offence. Prisons made it possible to calibrate punishments in units of time, providing an appearance of rationality and even science in the application of pain.

Between the mid-1800s and the 1970s, the practice of criminal justice in the United States, in some important respects, partially evolved away from strictly retributive justice.¹⁷ David Garland, in his important book, *The Culture of Control*,¹⁸ argues that the ‘penalwelfare’ model gained ascendancy, with a concern for rehabilitation of offenders and a diminishment of focus on strict punishment. This model, however, never received widespread support among the general population. Because politicians for a long time found it disadvantageous to try to intervene in criminal justice issues due to conventional wisdom that criminal justice was a no-win issue with which to be identified, the prison system was allowed to pursue its own agenda.

However, with a significant increase in the crime rate in the United States after World War II, politicians discovered that ‘law and order’ rhetoric gained them popularity. Because the modern criminal justice system did not have a wide constituency, and, probably more importantly, because the modern

criminal justice system tended to be centralized and bureaucratic and not noticeably effective in reducing incidents of crime, when strong critiques were raised in the 1960s and 1970s, the somewhat ineffective focus on rehabilitation was soon significantly lessened.

Garland traces the strong re-emergence of the retributive approach that has led to an extraordinary transformation of the US criminal justice system. The logic of retribution that became embedded in our criminal justice practices by the 19th century, even though it was mitigated against somewhat during the penal-welfare era, has returned with a vengeance in the last quarter of the 20th century and the early years of the 21st

The retributive model of justice, efforts to make criminal justice more rehabilitative notwithstanding, reflects a movement that transformed Western culture between the 11th century and the present. Through this process, crime came to be defined as against the state, justice became a monopoly of the state, punishment became normative, and victims were disregarded.

Retributive theology, which emphasized legalism and punishment, deeply influenced Western culture through rituals, hymns, symbols. An image 'of judicial murder, the cross, bestrode Western culture from the 11th to the 18th century,' with huge impact on the Western psyche. It entered the 'structures of affect' of Western Europe and 'in doing so, ... pumped retributivism into the legal bloodstream, reinforcing the retributive tendencies of the law.'¹⁹ This dynamic led to an obsession with retributive themes in the Bible. A kind of historical short-circuit occurred in which certain concepts were separated from their biblical context, interpreted through the lens of Roman law, then in turn used to interpret the biblical text. The result was an obsession with the retributive themes of the Bible and a neglect of the restorative ones – constructing a basic theology of a retributive God who desires violence.²⁰

A recipe for alienation

The paradigm of retributive justice that dominates Western criminal justice is a recipe for alienation, as is readily apparent in the United States in these early years of the 21st century. By making the 'satisfaction' of impersonal justice (or, in traditional Christian terms, the 'satisfaction' of 'God's impersonal holiness') the focus of our response to criminal activity, the personal human beings involved – victims, offenders, community members – rarely finds wholeness.

Moreover, the larger community's suffering often increases. Instead of healing the brokenness caused by the offence, we usually find ourselves with an increasing spiral of brokenness. Many victims of violence speak of being victimized again by the impersonal criminal justice system.²¹ Offenders, often alienated people already, become more deeply alienated by the punitive practices and persondestroying experiences of prisons.

David Garland portrays the 'culture of control' in criminal justice as a new form of social segregation. Criminal justice practices focus now not so much on rehabilitating and reintegrating offenders, but, to the contrary, on criminal justice practices that center much more on identifying and then isolating offenders. 'The prison is used today as a kind of reservation, a quarantine zone in which purportedly dangerous individuals are segregated in the name of public safety.'²²

Present dynamics emphasize the difference between offenders and law-abiding citizens. 'Being intrinsically evil or wicked, some offenders are not like us. They are dangerous others who threaten our safety and have no call on our fellow feeling. The appropriate reaction for society is one of social defence: we should defend ourselves against these dangerous enemies rather than concern ourselves with their welfare and prospects for rehabilitation.'²³

James Gilligan has drawn on his extensive experience working closely with violent offenders to articulate a strong critique of retributive justice as manifested in the United States criminal justice system. Gilligan asserts, 'society's prisons serve as a key for understanding the larger society as a whole.'²⁴ When we look through the 'magnifying glass' of the United States prison system, we see a society focused on trying to control violence through violence, a society that willingly inflicts incredible suffering on an everincreasing number of desperate people.

Despite our democratic principles in the United States, our belief that a person is innocent until proven guilty, and our self-identification as a 'Christian nation,' the United States leads the world in per capita prison rate. Our lead is rapidly growing. Between 1924 and 1975, the rate of incarceration remained fairly steady at around 100 prisoners per 100,000 population – a rate at that level higher than most industrialized nations. But since 1975, the rate has increased by more than four times, to 478 per 100,000 in 2000.²⁵

This exploding prison population faces increasingly worsening conditions. Gilligan writes that United States prisons have become ‘cruel, inhumane, and degrading, with severe overcrowding, frequent rapes and beatings, prolonged and arbitrary use of solitary confinement, grossly unsanitary, disease-inducing living conditions, and deprivation of elementary medical care.’²⁶

U.S. society’s tolerance of these dehumanizing conditions, it appears, follows from what Gilligan calls the ‘rational self-interest’ theory of violence.²⁷ According to this theory, human beings decide to use violence based on a rational calculation of costs and benefits. If people understood the costs of wrongdoing to be high enough, they should be deterred from such wrongdoing. The assumption follows from this theory that allowing our prisons to be hellholes will serve to prevent violence by deterring would be wrong-doers. A similar logic applies to the rationale for the death penalty.

Robert Hughes, in his account of the settling of Australia, tells a story from the 19th century that illustrates this theory.²⁸ Australia was founded as a British penal colony in the late 18th century. The British government sought to foster a terrible reputation for Australia to help deter crime out of fear of being exiled to the South Pacific. Over time, life in Australia proved to have its attractions, so officials sought to establish a prison within the prison that would be worthy of even the most hardened criminal’s terror.

Norfolk Island sits some 1,000 miles east of the Australian mainland. ‘Magnificent in scenery, Norfolk Island was also a natural prison, harbourless, cliff-bound and girdled with reefs on which the long Pacific swells broke with a ragged, monotonous booming.’²⁹ In 1824, Thomas Brisbane, Australia’s governor, under orders from Britain to ‘prepare a place of ultimate terror for the incorrigibles of the System’³⁰ made plans to use Norfolk Island for a prison of last resort from which no escape would be possible. Brisbane intended this island to serve as ‘the nadir of England’s penal system,’ the lowest level of hell. ‘Although no convict could escape from it, rumor and reputation would. In this way, the ‘Old Hell,’ in convict argot termed it, would reduce mainland crime by sheer terror.’³¹

‘On Norfolk Island, Brisbane promised, all pretence at reform would be dropped. Its sole purpose would be to provide ‘the *ne plus ultra* on convict degradation.’ The island could not support many prisoners, and those it contained must be the absolute worst of those doubledamned by the System,’

that is, those convicted first of crime in Britain and again in Australia'. Brisbane wrote 'the felon who is sent there is forever excluded from all hope of return.' Norfolk Island prisoners would have no legal rights; they 'have forfeited all claim to the protection of the law.'³²

The resettlement of the island began in 1825. The government's philosophy was concisely expressed by the governor of New South Wales, Ralph Darling: 'My object was to hold out that settlement as a place of the extremest punishment, short of death.'³³ This object was achieved; Norfolk Island became, in Hughes' words, 'the worst place on earth.'

The hellishness of Norfolk Island may be seen in the practice where prisoners would draw straws, designating one as the murderer, the second the victim, and the rest of the group witnesses. After the killing, since the commander of Norfolk Island did not have the authority to try capital crimes, the murderer and the witnesses had to be sent to Sydney for trial. The prisoners 'yearned for the meager relief of getting away from the 'ocean hell,' if only to a gallows on the mainland. In Sydney, there was some slight chance of escape.'³⁴ After several years of such murders, the government began sending judges to the Island to try, convict, and hang the murderers there.

In 1834, Norfolk Island prisoners rebelled. After the rebellion was put down, several dozen conspirators were convicted and of those 14 were hung. Shortly before the time of execution a Catholic priest came from the mainland. He informed those convicted of conspiracy who would be hung and who would be spared. He later wrote: 'Those who were to live wept bitterly, whilst those doomed to die, without exception, dropped on their knees, and with dry eyes thanked God that they were to be delivered from such a place.'³⁵

Hughes sees the actual purpose of Norfolk Island as not only to punish those unfortunate enough to be sent there but, even more so to make an impression on those who could potentially be sent there. 'Norfolk Island held a thousand convicts, but its real use was the intimidation of tens of thousands more. If it was not 'demonic,' it would have been as useless a deterrent as a gallows with no rope. Mercy on the mainland needed the background of terror elsewhere.'³⁶

Hughes quotes a leading Scot churchman of the time, Rev. Sydney Smith, who supported this rationale. Rev. Smith asserted that a prison should be 'a place of punishment from which men recoil with horror – a place of real suffering painful to the memory, terrible to the imagination, a place of sorrow and wailing, which should be entered with horror.'³⁷

Alexander Maconochie, Professor of Geography at University College, London, traveled to Australia in 1837 to investigate the treatment of prisoners. His report condemned the System, which he believed 'debased free and bond alike.'³⁸ This report ended up in the hands of John Russell, the head of the British penal system. Russell, who opposed the System of transportation of convicts to Australia, distributed Maconochie's report widely to bolster reform efforts.

In 1840 Maconochie was appointed head of Norfolk Island and given the chance to test his philosophy that prisons should rehabilitate more than punish. This appointment surprised Maconochie. He believed that Norfolk Island would be a less than ideal context for him to try out his theories given its extreme isolation and the damage already done to its prisoners.

However, enthusiastic to try his theories, Maconochie accepted the appointment. His initial encounter with the prisoners gave him hope. 'He had the Old Hands mustered in the jail yard at Kingston and strode in to confront the collective stare of twelve hundred men, nameless to him, masks of criminality and evasion, burnt by sun and seamed by misery, the twice convicted and doubly damned, Scottish bank clerks and aboriginal rapists, Spanish legionnaires and Malay pearlers, English killers and Irish rebels. 'A more demonical-looking assemblage could not be imagined,' he later wrote, 'and nearly the most formidable sight I ever beheld was the sea of faces upheld to me.' They looked at their new commander with utter skepticism.'³⁹

As Maconochie explained that his role was not to be their torturer but to help the men change their lives, the prisoners began to cheer. According to one witness, 'from that instant all crimes disappeared. The Old Hands from that moment were a different race of beings.'⁴⁰

Maconochie took many books to Norfolk Island for the prisoners to read and sought, as his main form of therapy, to encourage the inmates to make music. From the start, many Australians criticized his new approach, but the distance left him with a great deal of freedom. 'Maconochie dismantled the gallows, which had stood as a permanent emblem of dread outside the gate of the prisoners' barracks. He threw away the special double-loaded cats used by the floggers. The island had never had a church, but now Maconochie built two, one for Catholics and the other for Protestants, each accommodating 450 men ... He gave every man a plot of rich soil, set up classes in vegetable and fruit gardening ... and encouraged them to sell their surplus to the officers.'⁴¹

Maconochie's reforms met with mixed results, having a more positive impact on the Old Hands who, on the island when he arrived, had borne the brunt of earlier cruel administrators than on the New Hands who arrived after Maconochie. George Gipps, Governor of New South Wales, visited Norfolk Island and gave Maconochie's work qualified endorsement. Maconochie met with success in rehabilitating the 'worst of the worst' criminals. Under his administration, 920 prisoners were discharged to freedom in Sydney. As of 1845 (two years after Maconochie's leadership of Norfolk Island had ended), only 20 of them had been convicted of new crimes.⁴²

However, this success did not ensure Maconochie's tenure. British officials recalled him in 1843, after only three years as commandant. The increase in crime rates in Britain during the 1830s and early 1840s led to more harsh prison practices, including more support for having a symbol of the threat of extreme terror as a crime deterrent. Norfolk Island filled this requirement.

Hughes describes Maconochie's successor, Joseph Childs as 'a dull, vacillating military hack, distinguished only by his severity.'⁴³ 'From the moment Childs (reached the island) in February 1844, the trust Maconochie had struggled to establish between convicts and Authority caved in All the men on Norfolk Island were, in Childs's apoplectic language, 'the worst men that the annals of criminal jurisprudence can hold forth to the world as an example of all combined evil'.⁴⁴ Childs's term concluded in 1846 with a mutiny that resulted in the execution of 12 Norfolk Island prisoners.

Childs was succeeded by John Giles Price, 'the most notorious of all the commandants of Norfolk Island.'⁴⁵ In contrast to Maconochie's opening words to the prisoners in 1841 quoted above that elicited the applause of hopefulness, Price's opening words surely elicited only despair: 'I am come here to rule, and by God I'll do so and tame or kill you. I know you are cowardly dogs, and I'll make you worry and eat one another.'⁴⁶

'Price did not believe that reformation was possible; he assumed that good behavior was a sham and that everything any prisoner said about his own state of mind or moral purpose was a lie. 'Whenever a fellow is recommended to me by the religious instructor,' Price declared, 'I always set that fellow down as the greatest hypocrite of the whole lot'.⁴⁷

In time, knowledge of Price's extreme brutality elicited protests from a few ministers who visited Norfolk Island and observed Price's handiwork first hand. This led governmental leaders, who did not necessarily themselves

oppose such treatment of prisoners, to fear that Price ‘might become a serious embarrassment to the Crown’ and to remove him from his position in 1853. He moved on to lead another prison, where in 1857 a group of aggrieved inmates murdered him.⁴⁸

The government closed the prison on Norfolk Island shortly after Price left. Britain’s practice of sending convicts to Australia was winding down by that time, though it did not come to a complete stop until 1871.

The Norfolk Island story illustrates the logic of retribution linked with belief in the deterrent impact of the promise of terrible punishment for wrongdoers. The purpose of Norfolk Island, as became clear with the rejection of Maconochie’s fruitful efforts to rehabilitate the prisoners, centered neither on reform of offenders nor on protection of society from the dangers of recidivistic convicts. Rather, Norfolk Island served as the symbol of ultimate terror – regardless of the costs to the actual prisoners who suffered mightily at the hands of the brutal administrators of the Island.

Social consequences

Ironically, it would appear that the effect of treating prisoners with brutality and other dehumanizing tactics actually serves to put the broader society more at risk.

James Gilligan argues that ‘if the purpose of imprisonment is to socialize men to become as violent as possible – both while they are there and after they return to the community – we could hardly find a more effective way to accomplish it than what we do.’⁴⁹ Treating people violently makes them more violent. A large amount of the violence that is part of our criminal justice practices is segregated behind prison walls and invisible to the outside world. However, since nine out of every ten prisoners eventually return to society, we cannot escape the truth that treating prisoners violently and thereby making them more violent endangers all of us.

Psychologist Alice Miller makes an analogous point in her critique of the use of corporal punishment on children. Punishing alleged wrongdoing, responding to alleged violence with violence, only socializes children to become more violent. Even if violent punishment occurs in the early years of a child’s life and is segregated from the outside world, it sets off ripples that in time foster more violence in general.⁵⁰

Gilligan, too, sees a direct connection between people being treated violently as children and later acting violently themselves. He states that the strongest

predictor he has found for men being violent is their being treated violently, especially being treated violently as children.⁵¹ He asserts that ‘violence does not occur spontaneously or without a cause, it only occurs when somebody does something that causes it. Therefore, all we need to do to prevent violence is to stop doing what we have been doing to cause it.’⁵² In other words, the logic of retribution is not an answer to the problem of violence; it is one of the central causes.

Nonetheless, we remain in the grip of that logic in our criminal justice practices – with many negative consequences:

1. U.S. culture is increasingly characterized by growing social fragmentation, exacerbated by the ‘othering’ of convicted criminals. Garland calls this the ‘criminology of the other.’ We have incentives not to treat criminals as understandable, because then they would enter into our domain, we would humanize them, seeing ‘ourselves in them and them in ourselves. The criminology of the other encourages us to be prepared to condemn more and understand less.’⁵³
2. We pour an ever-higher percentage of increasingly scarce governmental resources into our prison system. Ironically, one effect of reducing public investments in education, job creation, and other means of heightening the stake citizens have in our society is to make crime more attractive for ever more needy people.⁵⁴
3. With the growing privatizing of prisons, we foster a more austere system with fewer resources available to make prison life humane and a means for rehabilitation – plus, we make corruption and profiteering more likely.
4. The combination of the extraordinary growth of the imprisonment rate with punitive laws that permanently, in many states, disenfranchise convicted criminals, leads to a rapidly growing segment of the population that has no sense of being vested in the wider society. This sense of alienation, ironically fostered in the name of public safety, actually makes all of us less secure.
5. More broadly, beyond literal disenfranchisement, all convicts are given a lifetime stigma few will escape. They will spend the rest of their lives with the identity of ‘ex-con’ living with a ‘debt to society’ they are never allowed to repay.⁵⁵

6. The prison system increasingly breeds more violence. As we see a reduction of the role of prisons as a context for education in usable life skills, the best predictor that convicts will not return to prison after release is their earning a college degree while in prison ⁵⁶We see an increase in the role of prisons as a context for *de facto* education in violence.
7. Disturbing evidence is growing to show that our present population of long-term prisoners is becoming a ticking time bomb due to high incidents of terrible communicative diseases that are likely to spread to the wider population in time.

Journalist Wil S. Hylton gives details of one example of the likelihood of a major public health problem within the prisons spreading to the broader society in his article, 'Sick on the Inside: Correctional HMOs and the Coming Prison Plague.'⁵⁷

One big risk is that a growing Hepatitis C (the most serious variety of Hepatitis) epidemic in the prisons will spread to the wider society. Nine out of ten prisoners will eventually be released. 'Somewhere between 20 and 40 percent of American prisoners are, at this very moment, infected with Hepatitis C, and therefore quite contagious.'⁵⁸

However, Hylton points out that the prison system presently does very little to screen for the disease among prisoners in most states. For the few who may be diagnosed, treatment is difficult to obtain. As infected prisoners are released (and most will be), the United States will face a drastic increase in Hepatitis C infections in the broader society – in part due to the retributive philosophy of fostering punishment among convicts, both to effect punishment for their wrong-doing and to serve as a deterrent for potential wrong-doers.

James Gilligan argues that nothing stimulates crime as effectively as punishment ⁵⁹ (We could say, nothing fosters violence like violence). 'Punishment is a form of violence in its own right, but it is also a cause of violence.' Punishment makes people more violent.⁶⁰Punishment humiliates its recipient, having the ironic impact of fostering shame in a way that actually reduces a person's sense of guilt and responsibility. People who feel profound shame, Gilligan argues, are especially prone to acting violently, especially when the inhibiting influence of guilt is absent.⁶¹

He describes how the dynamic tends to work: ‘Man’s greatest pain, whether in life or in prison, is the sense of personal insignificance, of being helpless and of no real value as a person, an individual – as a man. Imprisoned and left without any voice in or control over the things that affect him, his personal desires and feelings regarded with gracious indifference, and treated at best like a child and at worst like an animal by those having control of his life, a prisoner leads a life of acute deprivation and insignificance. The psychological pain involved in such an existence creates an urgent and terrible need for reinforcement of his sense of manhood and personal worth. Unfortunately, prison deprives those locked within of the normal avenues of pursuing gratification of their needs and leaves them with no instruments but sex, violence, and conquest to validate their sense of manhood and individual worth.’⁶² The spiral of violence intensifies – people hurt others, then the state steps in and hurts the violator, part of this state-sanctioned hurting takes the form of setting the violator in a culture of extreme violence (the prison) that further socializes the violent person to be violent. Eventually, often more severely damaged than when entering prison, the violator returns to society primed for more violence.

This spiral must be broken.

Against retribution

A crucial step in breaking free from the destructive dynamics of violence responding to violence is to recognize that the notion of ultimate reality drawing from a particular notion of God that underlies the retributive justice paradigm, is a human construct. These ideas about God are ideas human beings have drawn from human investigations of the world and, especially in the West, from the Bible and Christian tradition.

Theologian Timothy Gorringer’s ‘archaeology’ of the impact of Anselm’s theology on penal practices in the West provides a good example of such recognition.⁶³ Gorringer helps bring to the surface the interplay between human culture and humanly constructed theology in formulating a rationale for punitive criminal justice practices.

All theology, in the broad sense of our views of ultimate reality, is a human construct. To quote Gordon Kaufman: ‘All understandings of the world and of human existence are human imaginative constructions, grown up in a particular historical stream to provide orientation in life for those living in that history. But at any given time it is always an open question whether the

conceptions, values and perspectives inherited from the past remain suitable for orienting human existence in the new present; this is a question to be investigated, never a position which can simply be taken for granted.’⁶⁴

The notions of God and ultimate reality that underlie the retributive paradigm outlined above are not set in concrete. The ever-deepening and destructive spiral that results from responding to violence with violence need not be inevitable. In part, the spiral may be resisted, even broken, because its ideological basis has no ontological standing but is simply based on human ideas – ideas that may be challenged and refuted.

Retributive notions are the result of human reflection and human application. If these constructs contribute to brokenness instead of healing, furthering the spiral of violence instead of fostering genuine peace, they need to be deconstructed and replaced.

For Christians, recognizing the humanness of all theology does not leave us without criteria for ascertaining better or worse theological constructions. We need not fatalistically sink into moral relativism. Our confession of Jesus as the definitive revelation of God gives us, in his story, a sense of direction concerning which theologies contain truth and which do not.

Ironically, given the roots of our predicament in ‘Christian’ theology, if we return to Christianity’s founding document, the Bible, and read it free from the filters of the later retributive paradigm of Christendom, we might discover bases for a different understanding of justice, ultimate reality, and God. This re-reading provides bases for a new understanding of justice, restorative justice rather than retributive justice. Restorative justice offers us a different perspective on how we may respond to violence. Perhaps with a new perspective, we may be able to imagine responses to violence that break the cycle, striving for healing rather than punishment of wrong-doers.

To put it another way, the source of our problem might actually provide a way to overcome the problem. Herman Bianchi argues for applying ‘homeopathic theory’ to our situation. Maybe it will take a dose of what made us sick in order to cure us. Since an interpretation of theology landed us into this ‘illness,’ Bianchi suggests that it may well take a dose of theology to heal us.⁶⁵

At the heart of the retributive we find assumptions about God’s holiness and justice that make salvation a matter of sacrificial violence that in some sense balances out the evil human beings have done. In this

paradigm, violence is necessary for God to be appeased; God requires violence. In such a world we find inevitable links between the belief that God requires violence in response to violence and the justification of human beings (acting as God's agents) serving as agents of such required violence against other human beings.

If, as an alternative to a retribution-oriented understanding of salvation that reflects an understanding of God as desiring violence, we may construct an understanding of salvation that has no need for violence (ultimately, even, no *place* for violence) we may be in a better position to refute the logic of retribution as it is applied to criminal justice policies.

While recognizing that the Bible does not offer a simple, totally unified understanding of salvation, we may find less of a gulf between the Old Testament portrayal of sacrifice (as it was intended to be) and the prophetic perspective than many expect. A case may be made that the Old Testament actually presents sacrifice as being analogous to how it presents the law. In both cases, what we have are not means to salvation so much as responses to God's saving initiative. In both cases, we also have problems that arise when the order is reversed and either the law or the sacrifice is seen as means to gain leverage over against God.

The problem lies not with the idea of sacrifice per se, even less with an alleged Old Testament idea that God's anger needs to be appeased through an act of violence in killing in order to make sacrifice. Salvation in the Old Testament from start to finish is not presented as being linked with a will of God for violence.⁶⁶ Rather, salvation in the Old Testament is an expression of God's mercy. The role of sacrifice is essentially meant to be how people show their commitment to God as a response to God's saving works – just as following the law is meant to be how people show their commitment to God as a response to God's saving works. One sees this most clearly in Exodus 20:1-2 where Moses prefaces the Ten Commandments with the confession of God's saving work already expressed.

Another way of making this point is that in the Old Testament, the beginning point in thinking about salvation is God's purely gracious saving intervention. Nothing needs to be appeased or in any other sense changed within God before God will act to save. The changes that need to happen to effect salvation are strictly on the human side. Authentic sacrifice and authentic use of the Law are all about the human side of the dynamic.

According to the Old Testament salvation story, human beings do not sacrifice nor do human beings follow the Law in order somehow to effect a change in God's attitude toward them (as in appeasing God's holy anger). Sacrifice is a *response*, following the Law, expressing the human choice to trust in God and follow God.

Understanding sacrifice in this way has a significant impact on how we read the prophetic critique of sacrifice in the eighth-century prophets. The prophets do not reject the rationale for sacrifice as it was meant to be practiced. Rather, they reject the way sacrifice and religiosity in general found expression in their context. Sacrifice, in effect, according to Amos, became a means of making claims on God's favor that were separated from the demands of the core of the Law for just living as the central required response to God's mercy.

That is, when sacrifice co-exists with profound injustice, it has been cut off from its life-source and rationale. When sacrifice is not a response to mercy leading to just living, it proves that the mercy has not been accepted.

The prophetic understanding of salvation does not repudiate sacrifice *per se*, but rather underscores that salvation from the beginning in the Old Testament is strictly a gift from God, initiated by God, and appropriated first by trust in God alone (that is, a rejection of idols) and then actualized through sacrifice and obedience to the law.

We will find in Jesus' own teaching full compatibility with the Old Testament's understanding of salvation. Jesus himself did not portray God as needing an act of violence in order to establish a restored relationship with human beings. Jesus reflects the ideas of the prophets (and the ideas of most of the Old Testament) when he is twice recorded as quoting Hosea's words, 'I desire mercy and not sacrifice' (Hosea 6:6; Matthew 9:13; 12:7)

One major implication of this direction of thought is the likelihood that Jesus' death is *not* best understood as a necessary sacrifice to satisfy God's honor, to placate God's holiness, or to balance the scales of justice. If the basis for salvation is simply God's mercy, then Jesus' death loses much of the theological meaning that traditional theology assigns it.

Why did Jesus die, according to the story, and what meaning did that death have? Jesus died because of the combined violence of cultural, religious, and political principalities and powers. The basic soteriological significance of the death of Jesus is that his death exposes the Powers that put him to death

and reveals that these Powers are rivals to the true God. We find in Jesus' death the bases for anti-idolatry, a disillusionment with the central Principalities and Powers that seek to dominate human life and to separate people from God. The death of Jesus reveals the difference between the reign of God and the rule of evil. Evil uses violence, and God's reign does not.

Hence, the story of Jesus' death is not a story of necessary violence as an expression of God's punitive justice and as a requirement for human salvation. Rather, the story of Jesus' death is a repudiation of violence, a revelation that the Powers' claim to need to use violence is actually pure rebellion against God.

The saving significance of Jesus' resurrection may be found in how it vindicates Jesus' life, reveals the Powers as idols and promises that trust in God's love is the source of empowerment to find freedom from idols and restoration of harmony with God.

The Bible portrays the means of salvation as *free* from sacred violence. Hence, we appropriately affirm that God never desires violence. This affirmation of God's rejection of violence cuts the ground away from under the logic of retribution and should lead people of faith actively to seek alternatives to the various justifications for violence as the appropriate response to violence.

Notes

1. James Gilligan, *Violence: Our Deadly Epidemic and Its Causes* (New York: Putnam, 1996).
2. Millard Erickson, *Christian Theology* (Grand Rapids, MI: Baker Book House, 1984), 802.
3. Cited in John R. W. Stott, *The Cross of Christ* (Downers Grove, IL: InterVarsity Press, 1988), 120.
4. Erickson, *Christian*, 803.
5. Erickson, *Christian*, 816.
6. Cited in Philip Greven, *Spare the Child: The Religious Roots of Punishment and the Psychological Impact of Physical Abuse* (NY: Knopf, 1991), 50.
7. Erickson, *Christian*, 804.

- 8.. This section draws upon Ted Grimsrud and Howard Zehr, 'Rethinking God, Justice, and Treatment of Offenders,' in Thomas O'Connor, ed., *Religion, the Community, and the Rehabilitation of Offenders* (New York: Haworth Press, 2002), 259-285.
- 9.. For a recent short statement, see United States Supreme Court Justice Antonin Scalia's essay, 'God's Justice and Ours,' *First Things* 123 (May 2002), 17-21. The Roman Catholic Scalia, interestingly, rejects the Vatican's recent anti-death penalty statement, *Evangelium Vitae*, and uses the Bible (specifically Romans 13) to justify his pro-retributive justice convictions.
- 10.. See Gordon D. Kaufman, *In Face of Mystery: A Constructive Theology* (Cambridge, MA: Harvard University Press, 1993).
- 11.. See James Carroll, *Constantine's Sword: The Church and the Jews* (Boston: Houghton-Mifflin, 2001).
- 12.. Timothy Gorringer, *God's Just Vengeance: Crime, Violence, and the Rhetoric of Salvation* (New York: Cambridge University Press, 1996), 85-125. For Anselm's treatment of atonement theology, see 'Cur Deus Homo?' in Brian Evans and G.R. Evans, eds., *Anselm of Canterbury: The Major Works* (New York: Oxford University Press, 1998), 260-356. For an important recent critique of Anselm that is very much in harmony with my perspective, see J. Denny Weaver, *The Nonviolent Atonement* (Grand Rapids, MI: Eerdmans, 2001).
- 13.. For an accessible compendium of Augustine's social writings, see Henry Paolucci, ed., *The Political Writings of St. Augustine* (Chicago: Henry Regnery, 1962); Sections I and IV most directly speak to the issue of punishment.
- 14.. I am especially drawing here on Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1993), Herman Bianchi, *Justice as Sanctuary: Toward a New System of Crime Control* (Bloomington, IN: Indiana University Press, 1994), Gorringer, *God's Just Vengeance*, and Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice*, second edition (Scottsdale, PA: Herald Press, 1995).
- 15.. Bianchi, *Justice*, 16-17; see also Bernard Hamilton, *The Medieval Inquisition* (New York: Holmes and Meier Publishers, 1981).
- 16.. See Julian Pleasants, 'Religion that Restores Victims,' *New Theology Review* 9.3 (1996): 41-63.
- 17.. This evolution was paralleled in Europe. See the story of the gradual movement to abolish the death penalty in Great Britain – Harry Potter, *Hanging in Judgment: Religion and the Death Penalty in England* (New York: Continuum, 1993). Potter shows that once the movement to abolish the death penalty in Britain emerged in the early 19th century, it was opposed by the hierarchy of the Church of England. The final step that enabled the anti-death penalty proponents to win turned out to be a change of perspective among Anglican leaders.
- 18.. David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: University of Chicago Press, 2001).
- 19.. Gorringer, *God's*, 224.

- 20.. For an example, see H. Wayne House's biblically-based theological argument in favor of capital punishment in H. Wayne House and John Howard Yoder, *The Death Penalty Debate* (Dallas: Word Books, 1991), 1-104.
- 21.. See Howard Zehr, *Transcending: Reflections of Crime Victims* (Intercourse, PA: Good Books, 2001).
- 22.. Garland, *The Culture of Control*, 178.
- 23.. Garland, *The Culture of Control*, 184.
- 24.. Gilligan, *Violence*, 185.
- 25.. Richard D. Vogel, 'United States Capitalism and Incarceration Today,' *Monthly Review* 55.4 (September 2003), 39.
- 26.. Gilligan, *Violence*, 23-24. See also Garland, *Culture*, 130.
- 27.. Gilligan, *Violence*, 94-95.
- 28.. Robert Hughes, *The Fatal Shore: The Epic of Australia's Founding* (New York: Knopf, 1987), see especially pages 460-551. See also John Hirst, 'The Australian Experience: The Convict Colony,' in Norval Morris and David J. Rothman, eds., *The Oxford History of the Prison* (New York: Oxford University Press, 1998), 236-265, especially 260-262.
- 29.. Hughes, *Fatal*, 99.
- 30.. Hughes, *Fatal*, 455.
- 31.. Hughes, *Fatal*, 456.
- 32.. Hughes, *Fatal*, 456.
- 33.. Hughes, *Fatal*, 457.
- 34.. Hughes, *Fatal*, 468.
- 35.. Hughes, *Fatal*, 478-479.
- 36.. Hughes, *Fatal*, 484.
- 37.. Hughes, *Fatal*, 484.
- 38.. Hughes, *Fatal*, 490.
- 39.. Hughes, *Fatal*, 502.
- 40.. Hughes, *Fatal*, 502-3.
- 41.. Hughes, *Fatal*, 510.
- 42.. Hughes, *Fatal*, 519.
- 43.. Hughes, *Fatal*, 533.
- 44.. Hughes, *Fatal*, 534.
- 45.. Hughes, *Fatal*, 543.
- 46.. Hughes, *Fatal*, 544.
- 47.. Hughes, *Fatal*, 546.
- 48.. Hughes, *Fatal*, 549-550.
- 49.. Gilligan, *Violence*, 155.

- 50.. See especially Alice Miller, *For Your Own Good: Hidden Cruelty in Child-Rearing and the Roots of Violence* (New York: Farrar, Straus, Giroux, 1984). Her most recent book is, *The Truth Will Set You Free: Overcoming Emotional Blindness and Finding Your True Self* (New York: Basic Books, 2001). A similar argument from an anthropological perspective that using violence on people actually makes them more likely to be violent is made by Ashley Montagu, *The Nature of Human Aggression* (New York: Oxford University Press, 1976). See also, Philip Greven, *Spare the Child: The Religious Roots of Punishment and the Psychological Impact of Physical Abuse* (New York: Knopf, 1991) and, from an overtly theological perspective, Donald Capps, *The Child's Song: The Religious Abuse of Children* (Louisville: Westminster John Knox Press, 1995).
- 51.. Gilligan, *Violence*, 25.
- 52.. James Gilligan, *Preventing Violence* (New York: Thames and Hudson, 2001), 20.
- 53.. Garland, *Culture*, 184.
- 54.. See, for example, Eric Schlosser, 'The Prison-Industrial Complex,' *The Atlantic Monthly* 282.6 (December 1998): 51-77.
- 55.. Gerald Austin McHugh, *Christian Faith and Criminal Justice: Toward a Christian Response to Crime and Punishment* (Mahwah, NJ: Paulist Press, 1978), 148. As Eugene Bianchi writes, 'once a crime has been committed there is no forgiveness, and no activity of the offenders can bring them back into the community, not even passive submission to the harm we inflict on them' (*Justice*, 29-30).
- 56.. James Gilligan, *Preventing Violence* (New York: Thames and Hudson, 2001), 98-99. According to Gilligan, separate studies in the Massachusetts, Indiana, and California prison systems all showed that 'not one prisoner who had acquired a college degree while in prison had been reincarcerated for a new crime.'
- 57.. Wil S. Hylton, 'Sick on the Inside: Correctional HMOs and the Coming Prison Plague,' *Harper's Magazine* (August 2003): 43-54.
- 58.. Hylton, 'Sick,' 45.
- 59.. Gilligan, *Violence*, 187.
- 60.. Gilligan, *Violence*, 184.
- 61.. Gilligan, *Violence*, 187.
- 62.. Gilligan, *Violence*, 181.
- 63.. Gorringer, *God's Just Vengeance*.
- 64.. Kaufman, *In Face of Mystery*, 43.
- 65.. Bianchi, *Justice*, 2.
- 66.. This, of course, is not to claim that the Old Testament explicitly rejects all violence. However, if salvation itself is understood as being nonviolent, the way is cleared to see Jesus' rejection of violence as in continuity with the core biblical salvation story – in fact, as its logical outcome.

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