

Prudence Revisited

Retired, I have become an armchair criminologist, often lost in reading the papers or in thought about 20 or so years of experience and memories as a Canadian prison chaplain. Not too many require my services now that I am an out-to-pasture prison chaplain critical of the traditional rehabilitative prison idea. I have lots to think about though, and so much theological-philosophical reflection to do now with the daily grind and stress of my work-days behind bars behind me. With time to read whatever I want, I still seem to choose books on moral philosophy or criminology. Recently I stumbled across a book by Sir Walter Moberly: *The ethics of punishment*, London: Faber and Faber, 1968. It was written at the culmination of the author's career, containing a wealth of a lifetime of wrestling with the same issues that I still struggle with: the ethics and efficacy of penal punishment. Written before the full onset of the modern phase of criminology influenced by neoliberal political ideology, the war on drugs, and the truth in sentencing policies, I can identify trends in criminology, which, like old clothes go in and out of fashion it seems, but always therefore kept in the closet. Shallow thinking about criminal justice issues as well as public malaise regarding justice reform was as persistent in England then as it is in Canada now. Yet the author was hopeful that respectful, virtuous, pluralistic dialogue would lead to more effective and biblically sound interventions in issues of crime; and so am I.

Due to my diminished circle of influence there are fewer people interested in my musings on restorative justice anymore, especially when I spell out specific applications to criminal justice. It seems that many would just like to leave any critical moral theorizing about the "inefficacy" of law and order and the over-reliance on carceral punishment in the dark and not think or talk about it, sweep the issue under the carpet, ignore it; or, paradoxically get on the partisan "campaign wagon" to call for more severe penalties and longer sentences for Canada's lawbreakers. One can also hear said, "What does criminal justice and politics have to do with the church anyway?" The Church folk tell me that punishing the wrongdoer is the main responsibility of the state; and of course my Wardens told me, other than in my chapel responsibilities, keep religion out of prison politics. To ascribe limits to ecclesiastical abuse of power is wise, but to divorce heart from head in our political economic life is "foolish." Working in this space between church and state has challenged any static, abstract, armchair creed I ever subscribed to; and, reflecting deeply on specific experience has transformed how I think about justice, love, and reconciliation.

That the justice system is closely connected with politics is obvious. For instance recently our present federal government was being chastised for its hostility to a court ruling to transfer former Guantanamo Bay detainee Omar Khader from a federal to a less maximum security provincial institution. The public Safety Minister, hostile to the transfer, declared that the federal government intends to continue to punish Kadher for his crimes, crimes for which per Canadian law, though, he has already completed the requirements. (Sheila Pratt (July 9, 2014). "Ottawa to appeal ruling on Khadr's transfer." Vancouver Sun, p. B2). Pratt complained, regarding the Khader issue, that the present ruling party reflects a pandering to politics, and, I will add, its "working" public opinion for political advantage. A few days earlier, Michael Den Tandt (July 7, 2014), editorialized that Prime Minister Harper must change his favourite politicking strategy of bashing criminals to earn votes ("Harper needs to ditch the black hat and bromides." Vancouver Sun, p. A 8). With the federal election just over a year away, we can expect more

hostile attitudes and misinformation about justice in our media. Interestingly a few days before, July 5, I read that a research study at the University of Virginia revealed that American subjects of number of select social groups, including church members, would rather give themselves electric shocks than spend time in silence and contemplation. (Michelle Fay Cortez (July 5, 2014). "Electric shocks beat being alone and thinking." Vancouver Sun, p. B4).

If public opinion, based on such externally-based shallow thinking with a fear of deep contemplation, is at the core of the creation of public policy regarding crime and punishment, heaven help us; who will even recognize wisdom, evaluate evidence, or "hear" the still small voice of God here. Justice and Shalom, especially for the marginalized and despised, need wisdom derived from discernment and contemplation. If the church in general does not think deeply and inclusively about the moral ethical aspects of penal punishment, how will a prophetic voice go forth and how will the Ministers of justice and of Public Safety learn of alternative models of justice. I fear that the Church, silent on these issues on Sunday, will go forth as the church as organism, not as salt and light in this area of justice, but rather in collusion with the vacuous mixture of retribution and utilitarian deterrence. Now it is true that these philosophies of retributivism and Utilitarianism have some truth to them; they do need to be considered respectfully and with prudent sagacity. Crime and punishment has over the centuries inherited many aspects foreign to Divine Revelation, yet the dominant schools of thought have become virtually axiomatic normative models. Little moral-theological is brought to bear on this institution vital to public life, nor are many ears in the pew open to hear criticism other than, "justice should be tough and tougher". I don't mean to say that the church that gathers to remember and celebrate the Good News in Christ must be mobilized there for justice reform; but, the message preached and celebrated should be consistent with the manner of life lived in all areas of society, and socially demonstrate that agapic love is the core social ethical principal out of which all the issues of life flow, not fear and judgment.

Thankfully there are those who have recognized the incommensurability of the popular public mind and the mind of Christ in this area of our relationship to the wrongdoers of our neighbourhood and nation. I have worked with many who tirelessly devote themselves to establishing alternative justice programs based on restorative justice values and principles. As followers of Christ, it seems obvious that we must ground our moral theories and reasoning in what we mean by justice for our neighbour wrongdoer in the fullness of God's revelation in Jesus Christ. There must be congruence between our Sunday faith and Monday action. To assume an uncritical deontological, retributive, stance which mandates that that tough punishment (read inflicted pain) is necessary to balance the moral order in cases of wrongdoing, and ascribing this to God's design or will is simply paradoxically inconsistent with the Gospel of love, forgiveness, and grace. It is thus presumed that the statements about God's wrath regarding sin mandates that a wrong is to be reciprocated with a corresponding wrong sanctioned (re-labeled) as penal punishment by the justice system. Wrath is thus balanced reciprocated wrath, evil with evil. Ridiculous, suggests Sir Walter Moberly (1968), for that would be tantamount to appealing to Satan casting out Satan (Moberly, p. 39, 122). From a thorough reading of the scriptures and its primary focus on grace and redemption, we can only conclude that God as revealed in Christ will not act malevolently in dispensing Justice (Moberly, p. 340). Christ's teachings and example of servant hood and humility in peacemaking, updates and demonstrates how we are to read and apply Mica 6:8. In Christ's teaching

and work on earth, we know that old worn out trends of retributivist thinking that one may read into the Old Testament, have been clearly addressed and fulfilled; in responding to our enemies, and to the wrongdoer, the only reciprocal response is to do good - any outstanding debt owed is love; So much for a mythical debt to society to be satisfied by enduring applied pain in prison! In Christ, we have definitely entered into a new eschatological situation with a new moral universe of grace and love.

Much traditional public thinking about justice is along retributive lines which have been affected by the traditional general principle of reciprocity and exchange, as well as utilitarian thinking along the lines of the pursuit of the greatest happiness for the greatest number. Individualistically it is reflected by the logic, you scratch my back, I scratch yours; you hit me, I hit you back. Our post-modern society is focused individualistically on a mathematical calculation model of reciprocity, which in our consumer society is all about self-interest and protection and a return of "my" personal investment; the neighbour can look after him or herself as per social contract. The state must protect my freedom in this economic right. Justice and "Corrections" has become administrative and impersonal, with the focus narrowly on the bottom line of cutting costs for maximum public safety. A focus on human need, grace, forgiveness, or community shalom (reconciliation), makes little sense. People are not kept in line by being coddled it is intoned. The utilitarian "creed" of the greatest happiness for the greatest number does not insist on justice for **all**. Its pragmatic focus is on society as an impersonal entity which is protected by deterrence of crime by fear of the pain of punishment. Individuals caught in wrongdoing are made examples to deter future crime, and they are incapacitated in jail for the protection of society; ethical? With this line of thought there is little sensitivity to the human need or the moral response to wrongs regarding obligations to make things right between people...it is simply, pain, and reward, calculus as per social contract. Traditionally individual victims are not even in the picture except perhaps only as an aside.

The Christian community has not provided much specific input into looking for alternative models for doing justice. Many writers cite that the lack of awareness that there could even be alternatives keeps public response to crime sticking with the toxic "devil they know." The church as an organism, though, is still part of the public opinion and by implication morally, socially, responsible in its thinking and action. True, Restorative justice has been promoted, but there is still wide support in the evangelical world for severe retributive responses to crime mixed with utilitarian pragmatism consistent with those of the Harper government. The church at large, having not engaged in the public dialogue in any broad or deep sense, must regain its prophetic imagination (Walter Brueggemann, 2001) regarding criminal justice today. We must respectfully, in wisdom, collaborate from a variety of hermeneutical traditions, with many voices and perspectives, and be continually busy in discernment of, and deep reflection on, traditional assumptions that support retributive absolutism and libertarian, utilitarian, pragmatism of modern criminal justice practices with its focus on mandatory minimum sentences, deterrence and incarceration. Many policies maintained for public safety are simply promoted in self-seeking partisan interests maintained by fear, not wisdom. Redemptive, restorative, evidence-based models need to be widely promoted in order to seek to guard and nourish the humanity of all our co-image bearers in Canada; victim as well as offender, citizen as well as refugee. Canadian society is not simply a collection of lightly engaged strangers but rather as people-in-relation; we are all in community, and reciprocal

fairness and justice is not just for “atomized” individuals in a depersonalized society, but rather about us all, about the common weal or common good.

We are all stakeholders according to the holistic restorative justice model, and must continually be in dialogue, “palaver,” together about a justice that concerns us all, politicians, administrators of justice, the general public, and those working directly with the victims, offenders. We seek a congruence of personal faith, theological beliefs, and moral philosophy as much as is possible in a pluralistic society. Moral theologian Sir Walter Moberly (1968) comments regarding doing moral philosophy and criminology: “Pay especially respectful attention to the *Phronimoi*”. (p. 7). The word is of course related to the virtue of prudence, with deeper implications such as being shrewd, insightful, sensible, and sagacious in living; the opposite of being detached, foolish, or godless. By the *phronimoi*, Moberly suggests that in our theorizing on the issues of criminology we must seek the inclusion of the insights and practical wisdom of those who work directly in the various aspects of the justice system: “the probation officer, the prison governor, the experienced schoolmaster, the psychiatrist, the confessor [chaplain] and saint, whose varied experience provides the material from which conclusions which are drawn must be tested....we can only think profitably on such a theme if we think with our imaginations alive” (Moberly, p. 41). We must be inclusive in dialogic pluralism, as Wolterstorff would suggest (2008, Justice Rights and Wrongs), as well as being emotionally intelligent. Moberly alerts that we must avoid the double danger of being unaware of our own subjective prejudices, biases, and schematic assumptions, as well as the opposite danger of being so clinically analytical and abstract that there is no emotional connection with the human beings or life. “An ethical doctrine is of little value unless it can serve for human nature’s daily food “(Moberly, p. 41); “An armchair creed,” he asserts, “is no creed at all” (Moberly, p. 40). There is no hiding behind safe rituals and moralistic laws that isolate one from the perceived “evils of the world” as the Pharisees attempted to do.

It should be noted too, that harm is commonly done by well-meaning activists and volunteers who aggressively seek to fix and change society and people, but do not have any insight into their own prejudices, biases, or how they come across to the recipients of their services. Being limited historical people, we have all inherited biases, prejudices and cosmologies from the cultural and family systems and churches in which we grow up. In Canada we only need to recall the wrong that has been done by the policies of assimilation legislated for our First nations’ peoples reflecting the general mind of most non-aboriginal peoples. It is wise and sobering to recall the sense of superiority and cultural entitlement with which our colonial fathers and mothers came to Canada, thoughtlessly dispossessing the first nations. D. Bonhoeffer knew well to instruct us that we must all think deeply and develop discernment of self-in-culture and its systems to truly know the will of God:

“the will of God is not a system of rules which is established at the outset; it is something new and different in each situation in life, and for that reason a man [*sic*] must ever anew examine what the will of God may be.....The voice in the heart is not to be confused with the will of God, nor is any kind of inspiration or any general principle, for the will of God discloses itself ever anew only to him [*sic*] who proves it ever anew. (Ethics, 1968, p. 38)

Theory responsive to the “voice” or “vision” of God must be wrestled into perspective in fear and trembling, and also be life related, realistic in its actual context. (Looking at our own stuff can be painful). It must flow from, and relate to, the life and work of those who have laboured in the field; not so heavenly minded that it is no earthly good. The word *phroneo*, is to be distinguished from abstract, cerebral, rational calculation and logic. The more common words used for, “to think” such as *dokeo*, *logizomai*, or *logismos*, have a more rational focus, whereas *phroneo*, has classical roots indicating heart and relational knowledge. For Plato the word differed from, and complimented *Sophia*, in that *sophia* was more intellectual wisdom. *Phronesis*, was practical wisdom related to the receptivity of the soul giving insight, healing, and guidance in the battle with good and evil. For Aristotle, *phronesis* was a gift of God giving moral insight and practical acumen. G. Bertram (1974) notes that the use of the word, *phronimos* in the synoptic Gospels is found in parabolic forms, and that it “...applies to those who have grasped the eschatological position of man [sic]” *(TDNT, 1974, p., 234). From this point of view, the *phronimoi*, demonstrate eschatological social savvy as well as wisdom with a sense of “cunning” in the expanded realm and often unfamiliar territory of the universal health giving rule of Christ. Contrarily, the word *aphrones*, *foolish*, refers to the Pharisees’ false piety and exclusivism which is more concerned about outer ritual purity and appearances than true inner moral understanding and its practical humane application. *(G. Bertram, 1974 *Phrone-phronimos*, in Kittel, *Theological dictionary of the New Testament*, Vol ix, pp 220-235).

A good illustration of the implications of the meaning of the word for our purposes is in Luke 16:8. This is the parable of the so called shrewd manager (or unrighteous manager) who is wise in building social capital for his future security after some shadowy economic practice (Lk. 16: 1-12). Jesus commends the shrewd actions of the manager and suggests that we must learn from this parable to gain insight, to be busy, creative, sensible, and responsive, in the administration of our social and public life. Ordinary daily life is not so easily amenable to simple black white rules of cloistered morality, and requires creative shrewdness in the complexities of our socio-economic and political lives and the sub-cultures of our streets: We are to be wise in the ways of our risen and exalted Lord, and wise, in agape and peace, to the world around us. In thinking deeply from the heart and being prudent or shrewd, Jesus, advises, “...the people of this world are more shrewd in dealing with their own kind than are the people of light (Lk. 16: 8.b., NIV). Other uses of the word occur in passages indicate being wise and active in life, mindful and empathic, suggesting emotional maturity and insight into ourselves (e.g. Rom. 12:3). *Phronesis* then, is unlike a traditional understanding of *prudence* in that it steps creatively out of the box of static orthodox tradition into concern for the neighbour and the common good. Prudence in this sense is not a cautious reticence to get involved in the necessary public dialogue regarding restorative justice in application to criminal justice, but is courageous action which, in humility and practical wisdom seeks justice and mercy in a way that makes for *shalom*.

Entering into the uncharted territory of unfamiliar “subcultures” of prisons with counter-intuitive realities, we are presented with ethical dilemmas not readily amenable to old implicit models of thought and assumptions of right and wrong with which we have grown up with. This can be disconcerting if not frightening territory. Peter had needed the specific revelatory “therapy” of a vision from God well after the Day of Pentecost to overcome his natural belief and practice, if not an innate affective aversion

(disgust), that it was wrong to eat with Gentiles (Acts 10). To have Jews and Gentiles mingle, to consider them as brothers and sisters in the lord was one thing, but to overcome learned social-cultural taboos was another. Transformation and accommodation was necessary in many areas of social-cultural cognition, in practice, as well as in true feeling from the heart in the new historical order in Christ towards all the new “neighbours in Him. This is the eschatological New Creation one in which there was no distinction between Jew and Gentile, male female, the enemy, chronically ill, mentally ill. Repentant wrongdoers were forgiven and included in the new humanity in Christ: a new creation in which we see all others now no more after the flesh, but in Christ (II Cor. 5:16). The world does not have any illegitimate children, no “devil’s spawn” anymore. Most of us have gotten over that prejudice for the most part, but there are still biased taboos that divide and lead to judgment, exclusion, and injustice. Christ has broken down these dividing walls of social racial cultural and gender barriers. With his rejection of the reciprocity code, Christ has broken with the tradition of returning evil with evil. Practical wisdom and practical theology is necessary to live and minister with the new eschatological social-legal categorization and sensitivities to address the interests of Christ’s realm of shalom in our time.

In my experience, many in the church still must undergo some deep theological and emotional reflection in terms of how they relate to wrongdoers, prisoners, and those from cultures with who they have little knowledge, not to mention little heartfelt love; they may, rather, feel moral anxiety. A student volunteering with me once intuitively felt she had to leave because she became overcome with the feeling of evil defilement in the prison environment. One does need to dig deep to learn to be at one with gay and lesbian brothers and sisters without an implicit attitude of judgment and primary desire to fix that person’s problems, to cast out the supposed demon and convert them to the Lord. It is one thing to cognitively understand that various belief systems are valid and legal in Canadian society by law; it is quite another to experience a ritual gathering practicing a faith practice one grew up hearing denounced as evil. Can we experience common grace despite our intolerances? One may have been raised as children to be absolutely “holy” perfect in our sexual relationships; then it is a moral emotional challenge to listen deeply and actively in unconditional love with those neglected and abused especially as youth who often form “promiscuous” and “incestuous” relationships, and as they form subcultural attitudes and friendships for a sense of attachment and belonging. There is no simple advice for the mother of children with different abusive men who also are human beings and who love their children (or a man who has fathered children with different women etc.). There are no simple easy ethical answers for life on the street, or in the prison cell.

All this to say that the prison environment presents one with a social systemic context in which existential deep moral ethical wrestling is necessary, wrestling often more with our self-understanding than trying to understand the situation. It is here in the shadows of real life we need the pastoral shrewdness Jesus endorsed to find transformative creative solutions to situations that ought not to have developed in the first place. To put it bluntly: How do you give hope to the hopeless, or advice to those one’s own church body declares are “living in sin”? Can we, as Christ, speak a word of grace to those in the hell often of of their own creation? Perhaps we must even take a whole different take on what hell ultimately is. Moberly ponders suggestively, “The most terrible retribution is not what is done to us, but what we have become” (Moberly, p. 179). Yes, I can say I have preached grace to spirits in hell reflecting

agapic love. More demanding has been the wisdom of humbly affirming the social obligations that arise from the guilt of being part of a society in which many of our mentally ill and minorities and First nations have experienced discrimination, exploitation and neglect; “collateral damage” in a resource hungry consumer society.

Condemnation and judgment seems to come natural to those of us raised in western culture, so is the innate tendency to want to fix the world. We establish projects to eliminate this and that, and pursue our tasks in the technological spirit inherited from the insights of science, in the tradition of American Progressivism. We in North America believe that technology is power; we must make a better world, make a bigger and better church. Such a sense of duty primarily to progress and success in achieving goals, worthy as it may be, has the danger of becoming absolute and oppressive, with the effect of dehumanizing the subjects as they become projects to fix, rather than people to love. A sense of superiority, of triumphalism, of being aggressive in correcting errors, or fixing disorder, comes natural in our modern Western society, church included. It is easy to slip from the Genesis 1:28 reading of being stewardly in our having “dominion over” creation (Cultural mandate as per neo-Calvinists), to being misguided agents of cultural religious domination.

Domination is not new in the prison experience. Already in the later part of the 19th century (progressive era in the evolution of North American prisons) armed with the new tools and skills from the sciences, it was believed all our social problems could be overcome using scientific technique. The Social Gospel folk as well as respected politicians such as Tommy Douglas entertained this progressive perspective, sometimes prejudicially and aggressively as the “Sexual Sterilization Act” of 1928 illustrates; it was applied to inmates in provincial institutions as well. The eugenics movement sounded good, to create a pure society by removing all imperfections, social, physical, and mental. The eugenics movement was of course shocked into reality because of the diabolical extremes of the Holocaust as engineered by NAZI technique. The movement does reveal how the will to use force to purify, to “reform,” and do “good” can easily go to seed with misguided zeal without wisdom born of empathy and love. Canadian institutions struggled with eugenic ideas and practices until the 1960’s. We must remember with sadness the “60’s scoop” as well. (Thomas H. and Ian McLeod, 2004, “Tommy Douglas: the road to Jerusalem.” Edmonton: Fifth House, pp. 49-52)

Perhaps the cultural mandate is still vulnerable to such ideas that get misdirected into aggressive social control and social engineering, in law and order justice, rather than that of transformation in sagacious love. In Christ I believe, we are not mandated to fix or change the world with the force of technique as the ultimate tool. Eschatologically, realized, and future, the spirit of God will do that if necessary. We are called to be ambassadors in God’s mission of reconciliation, not mere administrators of technological actuarial services. We are called to Love the world sacrificially expressed in creative, transformative, action, and to do justice humbly in Love. It is in this manner then that the *phronimoi* enter into their activities, with informed, inclusive, discernment, praying, “your will be done, on earth as in heaven.”

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