

Nicholas Wolterstorff. (2011). *Justice in Love*. Grand Rapids Michigan: William B. Eerdmans Publishing Company, 2011. A review. Henk Smidstra. Feb. 14, 2013

Wolterstorff's latest book, *Justice in love*, is written in his usual philosophically logical style. This book follows his recent book, *Justice: Rights and Wrongs*; he now explores and philosophically parses the concept of agapic love as it relates to justice. At times I thought he was splitting hairs of moral philosophy, but then I would have an "aha" moment and discover a significant insight. The book is certainly worth the time of reading and pondering over. He is challenging at times, and quite courageous in critiquing *lex talionis*, and the popular use of Anselm's view of atonement influenced by that code of reciprocity (especially the negative, the *lex*, side of returning evil for evil), rejecting also the attendant necessity of retribution and its conclusions about justice and forgiveness. As if that Challenge is not enough, he reframes the orthodox Calvinist doctrine of election, and makes helpful distinctions upon a thorough discussion of the meaning of justification as found in St. Paul's letter to the Romans. He, like me, comes from the reformed (CRC) tradition, and I recommend this book for wide reading and dialogue to enrich and broaden dialogue on justice. Justice talk in Christian circles is common, but is often partially informed and parochially understood; and, we need to develop capacities to think outside the box in our dialogue regarding justice and love issues in our churches, society, and our personal lives to be congruent in our calling as Christ followers. In public, pluralist, settings, there are many opportunities to act as salt and light that can help to build a better world rather than add to its burden of judgment, exclusion, and violence.

I differ with Wolterstorff on some issues related to his application of insights to criminal justice, and am still amazed that he says nothing about restorative justice. I appreciate Wolterstorff's doggedly analytical style in making clear rather abstract issues of moral philosophy and theology, but consider him quite cerebral, often focused narrowly on the individual as moral agent, lacking a holistic insight. However, this could be a result of the nature of his abstract topic as a philosopher. He does note that his analytical focus on justice and love is on the individual for purposes of his study, but insists that the individual is part of the broader social and institutional fabric of life, existing in social, religious associations in America, facilitated by a liberal democratic arrangement. Goods, though, have priority over rights in Wolterstorff's model. In his discussion he opens doors for dialogue and study for making deeper contextual and systemic connections possible. He sticks to his main thesis showing that justice and love are not incompatible. I find his exegetical work thought provoking, thorough, and challenging, especially in his work on his critique of the influence of, and continued adherence to, the *lex talionis*, as well as appreciating his discussion of the topic of justification.

In the preface to the book, we are reminded that this book is not a discourse on Justice, or on love. In this book, *justice in Love*, Wolterstorff will focus on the relation between justice and love. He does however pick up on theme of justice that he introduced in his previous book, *Justice: Rights and Wrongs*. In section two, he develops his model of love, agape as care; and then in the last two sections he poses a few select areas where in traditional agapist circles, justice has been seen to be in conflict with love. "Justice is not superseded in the New Testament, but justice lies at the heart of the New Testament Gospels" (p.50).

In the first section of the book, Wolterstorff begins by establishing his thesis that love and forgiveness do not invalidate or contradict justice, instead he argues for a compatibilist view. Wolterstorff reviews the agapist tradition in moral philosophy and ethics, those primarily of Anders Nygren, Soren Kierkegaard, as well as that of Reinhold Niebuhr, who all hold non-compatibilist positions regarding the relation of justice and love (love has trumped or is incompatible with justice). Wolterstorff validates the essential core of the agapist tradition which is grounded in the Biblical mandate to love ones neighbour as oneself. In traditional agapism, agapic love (neighbour love or Christian love), is a species of benevolence, a love that seeks to promote the good or welfare of someone else as an end in itself, not as a requirement of justice. Such love is gratuitous generosity, not from a self-love or self-will, nor a love because justice requires it. It is in regard to this relationship of love to justice especially that Wolterstorff moves beyond the traditional agapist tradition and will suggest his own model love, a model of love as care as an example of justice - a love that incorporates justice. In terms of justice, Wolterstorff will suggest that the worth vested in a person by God requires of us that we treat each other justly, and that we are motivated by compassion, as the good Samaritan was, or by attraction to the other's worth, or by a sense of solidarity; a sense of duty is a last resort fall-back position.

Wolterstorff develops his model of love as an example of justice, in section two. He will insist that justice must be done, but insists that justice is not retribution, nor is punishment to be equated with retribution. He will later opt for the term *reprobative* punishment. Jesus deepens Old Testament prescriptions to love and forbids the code of returning evil for evil. In his discussion of the Sermon on the Mount, Wolterstorff concludes, "What Jesus repudiates is not only the *lex talionis* but the reciprocity code as a whole of which the *lex talionis* is the negative side" (p.125). All human response to enemy and neighbour alike is to seek to promote their good. Wolterstorff concludes that interventions are necessary at times, but justice- in- love also must be the motive and rationale to not return evil for evil; "Impose on the evil doer some diminution of his wellbeing only if it serves the good. Reject vengeance. Do not try to get even. Repudiate the reciprocity code" (p. 126).

Wolterstorff analyzes the work of the popular models of agapism, building on the core of the love imperative to go beyond mere compliance or duty. Love as care, suggests Wolterstorff, necessarily flows from the Bible's love command, and implies that love, like faith, without works is dead. "If all a person does is *desire* that the good of someone be enhanced or *desire* that her worth be respected, I will not describe her as caring about that person," states Wolterstorff (p. 103). Care is *seeking to promote* what one believes to be that person's good or right....only if one actually *seeks* her good or seeks her right is one caring about the person"(p.103). He goes on to suggest that agapic love is intertwined with other forms of love to form attachment and value bonds along with affirming rights that he describes as normative social bonds. Wolterstorff goes on to say that his model reflects the work done on the *ethics of care*, but that his concept of love as care rather than love as benevolence, "...emerged from engaging the agapist tradition and its founding documents and discovering that modern day agapism is incapable of giving satisfactory account of how justice fits into an agapist framework"(p.104). In this regard, Wolterstorff finds that Nygren and Kierkegaard polarize love and justice, who suggest that justice is unnecessary in love, or love trumps justice. Reinhold Niebuhr renders love out of bounds in justice; justice, not love, is necessary in conflict situations. Wolterstorff wishes to

establish, "... an understanding of love such that the imperative to act justly is not in conflict with the law of love, not a restriction thereon, not even a supplement, but such that doing justice is an *example* of love"(p. 84).

Wolterstorff spends a chapter reviewing his concept of justice as presented in his previous book, *Justice: Rights and Wrongs*. Justice as respecting inherent human rights grounded in God's worth vested in all human beings was his main theme. Justice is then actively seeking the good of the other, and of self; in seeking that good as that which is due one because of the gift of worth bestowed by God. Inherent rights are grounded in this universal worth bestowed upon humanity upon creation. Christ has deepened and universalized the scope of the Torah's intent, intertwined with the love imperative, to guide human living toward human flourishing and shalom. It follows, suggests Wolterstorff that based on his or her worth, love asks us to actively seek to promote the good in our neighbour's life as an end in itself. "Love for another seeks to secure that she be treated justly by oneself and others – that her rights be honored, that she be treated in a way that befits her worth" (p.93). Love must be healthy, not malformed, because healthy self-love and attachment issues are necessary to act justly and provide care that truly leads to life flourishing. The Law of Moses, and Jesus, assumes that we love ourselves (pp. 79-84). With his non-bifurcated concept of love and justice, Wolterstorff presents a holistic model of love and justice, which has justice not just being the hard hand of restraint and force when crime demands it as Niebuhr suggests, but justice in love is involved in all our relations. His concept universalizes justice and love, "no one may fall outside the circle of one's care," suggests Wolterstorff (p. 131).

For Wolterstorff, the state is an important institution in preserving the rights and good of the community. Punishment, he suggests, is not intrinsically wrong; but punishment may not be equated with retribution. Instead he sees punishment as a way of seeking and preserving the good. The ruler's task is to encourage and restrain evil, not with evil, but for good. Any punishment imposed on the evildoer must serve the good and not do more wrong (127). Wolterstorff uses familiar, traditional, vocabulary of punishment, of the wrath of God to restrain evil, and we need to read him carefully having read his rejection of the traditional use of retribution and of the ancient code of reciprocity. Wolterstorff is critical of the current American justice system, observing that it is brutish and driven by impulses based on returning evil for evil; he advocates for a "deterrence-system," but one presumably based on justice in care (p.205). Wolterstorff implies that the proper use of government authority will not seek to achieve a public good in a bad way. Reproof of the neighbour is seeking their good. In interpreting the Old Testament, and the New, we may miss the fact that underlying all of the law and injunctions to obedience is the law of love. We miss the point of hyperbolic language, Wolterstorff suggests, with unimaginative literal-mindedness (p. 124). Government is to encourage those who do good, and restrain those seeking evil ends. Paul in Romans, says Wolterstorff, says nothing about getting even but insists that punishment is to be a good. Wolterstorff will emphasize, that the main theme in Romans is of God's generous impartial justice, *dikaioisune*, (not translated as righteousness; Keep in mind that Rome, in Paul's lifetime, as the seat of Roman rule, Roman justice was supreme and at the core unjust, blatantly partial, in dispensing justice, *ius*, only fairly to accepted citizens, and exhibited cruel bias openly in the manner of the reciprocity code. Both the repudiation of the code and the affirmation of impartiality would have been revolutionary). Jesus repudiates the code and its attendant logic of retribution.

Wolterstorff nowhere states that God is bound by the ancient code; ultimate justice is up to God's vengeance, *ekdikesis*. Would this be in line with the law of love that is asked of us? Wolterstorff asks if in our thinking of what God's vengeance might be like in response to something like the holocaust, "...we could not do it" (p. 128). Justice in love takes hard work of putting ourselves aside since the code of reciprocity [retaliation] is "deeply embedded within the psychological makeup of all of us" (p. 141).

Anticipating rebuttal concerning his focus on the individual, as well as on his rights-talk, as liberalism, he states that for the purposes of analysis of the topic his focus is on individual relationships, but in life he notes, all human relationships exist in "social entities", encompassing relationships with others and the state (p. 136). There is a duality of the, *I*, and the, *thou*, in all of us (98). On rights and corresponding obligations, he reiterates that rights are normative social relationships, and that he is not endorsing rights talk typical of possessive individualism, of self-indulgence, which only speaks of claiming and guaranteeing personal rights, not honoring the rights of others. The thinking of natural human rights did not originate in Enlightenment liberalism, but existed in the work of 12th century canon lawyers and assumed in the work of the early church fathers and in the Old testament/Hebrew Bible (pp. 90-92).

In the last two sections of his book, Wolterstorff continues to develop his thought that love and justice are compatible, and he analyzes issues traditionally perceived to pose love and justice to be in conflict with each other. The cases he analyzes in depth are forgiveness of wrongdoers, benevolence, and paternalism. In the case of forgiveness, Wolterstorff notes the problem Anselm had with forgiveness, who insisted that God's justice demanded punishment. Anselm, suggests Wolterstorff, was committed to the ancient reciprocity code; forgiveness in issues of justice was impossible in his logic, and apparently for those committed to that view still today. Wolterstorff questions whether Anselm's assumptions led his followers into "... erroneously into calling vicarious punishment of the wrongdoer *forgiveness* of the wrongdoer?" (p.193). Wolterstorff points out that one doesn't punish those forgiven, if we are punished, even vicariously, then we are not forgiven; thus, forgiveness cannot be equated with punishment. Wolterstorff will suggest that our justification as sinners is rooted in God's generosity on of account of our faith in Jesus' faithfulness for us. "That Christ's suffering was in some way *for us* is undeniably a component of New Testament teaching. But if God forgives us for our wrongdoing, then the idea that our punishment took the form of Christ suffering on our behalf cannot be the right account of Christ suffering *for us*" (p. 192). God in his mercy dismisses our sin and guilt recognizing our affirmation of Jesus as Lord.

Jesus made clear his rejection of the code, and this has implications for how we do justice in love as his followers. Wolterstorff adds that despite Christ's rejection of the reciprocity code, it still has a tight grip on human thought and imagination (p193). He emphasizes that forgoing punishment does not violate the demands of justice; but, neither is forgiving to be equated with forgetting or condoning. God does not forget or ignore human sin by merely acquitting in the legal sense of the word, but *dismisses the case* ...ceases to count our sins against us, and sets us on a new course with a new status as servants of *dikaiosisune* in Christ.

Wolterstorff's lengthy analysis of justice, love, and forgiveness is thought provoking, though I find Wolterstorff's philosophical essentialism too narrow to allow for an holistic analysis. I would have

wished for a more integrated approach including such issues of human psychology such as post-traumatic stress and grief, among others. He seems to dichotomize harms and wrongs in distinguishing them. It seems to me that it is only if the story of the wrongs is shared explored and felt that healing and reconciliation of some kind can move forward; forgiving, like grief recovery, is a holistic human process involving the heart as well as moral calculation in the head. Wolterstorff's focus is on the human being as a rational moral agent. Forgiveness serves justice, according to Wolterstorff, because it serves the good of the wrongdoer; forgiveness lifts the burdens of recrimination of the past, forgiveness liberates both victim and offender and is thus an intrinsic good in the life of the other and it offers life-flourishing goodness. "Forgiveness as a mode of caring about the other is hard to bring off. It does not come naturally. What comes naturally is nursing one's anger and lusting for revenge" (p. 190). As a mode of love, forgiveness does not violate justice, but is an example of it; it integrates and completes it. Injustice, however, is not swept under the carpet in an a-justice or conflict avoiding manner; Full reconciliation requires reformation of character" (p.227).

Wolterstorff rejects the traditional form of retributive justice that calls for punishment in the traditional sense of balancing pain committed, with pain in return; returning what they have coming to them, retribution in compliance to the reciprocity code. Wolterstorff adopts the term *reprobative punishment*, borrowed from Joel Feinberg's work, "The Expressive Function of Punishment" (p.193). This concept emphasizes that the public, formal, symbolic, acts of repudiation of the wrongdoing, are denunciatory message-sending formalities. Included also is a formal process which emphasizes rehabilitation and deterrence. I find the word "reprobative" rather unfortunate, conjuring up all sorts of connotations of damnation of the reprobate. However, it is suggested that with this reprobative rationale of punishment, the state, symbolically, fulfills its responsibility to send a message of denunciation of the criminal act, and provide for rehabilitation, public safety, by the deterrence. It is not, however, states Wolterstorff, a violation of justice to forgive the repentant wrongdoer. Forgiveness does not violate justice and only punishments that bring about life-goods may be imposed. Punishment is not inherently wrong, but it is not involved in pain infliction as it has traditionally been used. Wolterstorff criticizes the current American justice system not in keeping with his ideal, committed to returning evil for evil, not committed to rehabilitation, "...its fundamental rationale in the mind of the public is retribution, this overlaid with rationales of deterrence and social protection" (p.193).

Regarding paternalism, Wolterstorff concludes that though gratuitous benefits can be distributed wrongly, and unjust bias and prejudice can be present in paternalistic acts. However, the abuse of benevolent or paternalistic acts does not void their proper use. Acts of gratuity and of just paternalism do not violate justice if they honour prior existing rights. After an extensive analysis of the parable of the labourers in the vineyard and the one known as the prodigal son, Wolterstorff suggests that neither the Landlord, nor the father, acted unjustly; it was the expectations of others regarding their notion of justice that had to change. In the discussion on the possible abuses of paternalism it was shown that in some cases paternalistic intervention is necessary, caring and just. Paternalism becomes unjust and conflicts with justice when prior rights are ignored and undue pressure and coercion occur. Unjust paternalism has often been practiced in our colonial history suggests Wolterstorff; often outright violation of human rights was practiced. However, intervention in situations of self-harm is as just as is

intervention in situations where harm is done to others; this is not a violation of absolute autonomy as proffered by some of liberalism's schools of thought. "There cannot be such a thing as a non-paternalistic state" (p. 235). The notion of just paternalism legitimates certain State interventions in individual and community life. In American liberal democratic pluralistic society, alerts Wolterstorff, it is important that in legislation, that the variety of voices, of "deliberative adults," of all the "associations" be honoured, and differences will need to be negotiated fairly if justice be sought for all for the common good. In a liberal democratic society, implies Wolterstorff, overzealous agapists are to be constrained from seeking only their own ends, but citizens must also respect the rights as claimed by other, even those with whom they disagree. Wolterstorff, it seems to me, is treading a middle way between libertarian and communitarian traditions in his support of liberal democracy, concluding that paternalism and justice in love are in keeping with its principles and values. He does seem to put a lot of faith in the symbolic and in abstract legal political process.

In the last section of the book, Wolterstorff offers a thorough analysis of St. Paul's model of justification as found in his letter to the Romans. In Romans, the justice of God's impartial justification is argued, not the righteousness of God. God is just and fair, emphasises Wolterstorff, in offering His gift of justification to the Jew and to the gentile alike. The unifying topic of the Book of Roman's, Wolterstorff offers, is, "The Justice of God's Generosity" (pp.259, 281). This generosity is not a violation of the demand for justice; it is the very just love of God for all people. Wolterstorff does a thorough investigation of the Greek words related to justice and righteousness and complains that the linguistic unity of *dik-* stem words is lost in English translation. Misunderstandings and mistranslations have occurred, he suggests, which come from a dominant atonement theory, misconstrued, and a misunderstanding of the main theme of Paul's letter to those in Rome. The Epistle is structured stylistically along the lines of legal court room argumentation, with the case from the outset claiming that God's impartiality is just and generous in offering justification universally; God is not unjust even after finding that no one is found *dikaïos*, not even one (p. 260). Wolterstorff contends in regards to the implied logic of Anselm's atonement theory that, "...vicarious punishment and Pauline justification are incompatible" (p.165); "Justification is the juridical equivalent of inter-personal forgiveness" (p.165).

It is not a violation of the moral order to forgive a wrongdoer and forgo punishing them, insists Wolterstorff. It is also not the case that we are now acquitted, innocent of wrongdoing, since we have all been declared guilty, and the wrong done [or harm] just doesn't magically disappear. Wolterstorff suggests that despite our guilty charge, because of our faith in Jesus who faithfully suffered for us, our sin and guilt is dismissed; as in the case of Abraham, on account of our faith we are reckoned justified by God's generosity, our sins are not counted against us; as in 2 Cor. 5:19 (p. 264). The judge makes a reckoning regarding our faith and dismisses the charges. Justification is then having our charges dropped on account of God's just generosity and mercy, and we are awarded the gift of justification. Wolterstorff has chosen not to discuss the mysteries and polyvalence of atonement theories for the sake of pursuing his theme of the justice of God's love. He notes, "Paul held that God justifies sinners on account of the fidelity of Jesus; Christ died *for us*....I have made no attempt to articulate how Paul thinks that works....how the fidelity of Jesus grounds God's justification of the sinner. Let me just say that

whatever conclusions one reaches on the latter topic have to fit within the framework that Paul himself establishes in Romans and that I have laid out” (pp.280-281).

This gift of justification, Wolterstorff states, is not just open for the special elect; the rest rejected or passed over as if God is playing favourites. Wolterstorff reframes the traditional logic of election. He notes that there are those specifically called by God, such as the Patriarchs, and Israel, for positive roles, for a “special use,” in the story line of redemption; others such as Pharaoh, for instance, were called to serve a negative role. All others, including those with the special calling, are called to an “ordinary use” (p.268). God impartially offers his justice of generosity to all human kind, elected to a special role or an ordinary one. Paul is not speaking of some elected to have faith, and others not. Wolterstorff suggests that Justification is a gift from God universally offered. When we confess that Jesus is lord, we are acknowledging our faith in God; and, having faith in God is necessary, but justification is not grounded in our faith, but in Christ’s faithfulness for us somehow, in his life, death, and resurrection. All who call upon the name of the Lord will be saved; God in His justice shows no partiality and in that justly gracious and merciful.

In conclusion, I found that Wolterstorff succeeded in fulfilling his intended purpose for the book, which was to develop his version of agapism and show that agapic love and justice are compatible, not incompatible as many have traditionally maintained. In his work he was analytically thorough, and there are many insights to be gained into the core issues presented, as well stimulating insights into some related topics such as his discussion on forgiveness, faith, justification and election, as well as in his shorter discussions on paternalism and liberal democracy. For me he has clarified and validated my long standing consternation over the theological and moral issue of the reciprocity code, especially the negative side of it as it has traditionally been used. To insist in justice as retribution meaning giving wrongdoers their earned due of evil for evil, just did not sit well with me in my work as prison chaplain, working as I did with “wrongdoers” and “evil doers” and such, as Wolterstorff is still wont to label them. I saw their human worth as going deeper than the worst thing they had done and I felt called to tell them that.

Wolterstorff has written a valuable and timely book which will give opportunity for discussion of a significant new moral-philosophical, theological grounding for a model for doing justice in the 21st century. I do wish he had spent some of his usual analytical energy on parsing the word, *poena*, “punishment;” it does come from Latin word for pain. I also regret that he did not refer to any recent work on restorative justice. In many places of his book it would seem natural for him to do so, such in his focus on the needs served in forgiveness. It is in this regard I wish to comment beyond a few personal comments previously made in the account above.

I find that Wolterstorff’s analytical focus on moral philosophy often neglects to develop a dynamically integrated understanding of the variety of institutions and human experiences that are interwoven in the existential human experience of love and justice. His focus throughout is on the individual wrongdoer and the wronged, not on contextual realities. He also states that harms and wrongs are not the same thing. He distinguishes that one can be harmed and not wronged, and wronged and not harmed. Maybe so; but, in real life I regard the two as flip sides of the same coin; I suggest that the

symbolic and existential are organically and systemically in mutual interaction. When it gets right down to it, it is the emotional harm suffered from injustice (wrongs) in a serious conflict, and in some seemingly insignificant “crimes,” that can linger longer than the physical or external wounds. Forgiveness is as much a hard and lengthy emotional process as grief and as trauma recovery is. It is the story telling and focus on the harms that brings victims to a possible point to forgive the one who harmed them, the “*harmdoer*” (my term). Wolterstorff contends that therapeutic tradition has created confusion. It seems to me, that Wolterstorff fails to include, in an historical or organic sense, the life traumas, abuses, and abandonment in life destroying environments (vitality robbing environments) that contributed to the pathways to crime that “wrongdoers” have tread, especially in their developmental years. Where was the justice in love there? He may perhaps point to the paternalistic responsibility of the state in pro-active intervention. Wolterstorff seems to pose that all wrongdoers and victims are individual “deliberative adults,” moral agents, able to do moral calculus unfiltered by cognitively-affective subjective bias and disturbances in brain chemistry. I sense that Wolterstorff works with a kind of a kind of Lockian and positivist attitude towards psychology; a simple, hard, mind over matter endeavour.

Many of Wolterstorff’s hypothetical cases of conflict, even as murder situations, has the victims and those impacted mulling over their choices of response, but in reality in the present Justice system, the victim, especially the secondary victim, has very little place to ruminate in a formal instrumental way. The primary “victim” is the state, a situation of things that criminologist Nils Christie classified as the theft of the crime by the state from the rightful owners in the community. Why Wolterstorff neglects restorative justice beats me. His is the assumption of the absolute right of state monopoly over the “reprobative punishment” of the wrongdoer.

Regarding the term, “reprobative rationale for punishment” which Wolterstorff adopted from Joel Fienberg, this is also a partial explanation of a much more complex interactive systemic, a cultural-social phenomenon. That punishment sends a symbolic message to the offender and the public is undoubtedly true. But much more is going on. Messages of denunciation are certainly sent upon arrest, trial and sentencing, and incarceration. But symbolic messages are also sent about who is in charge, about the power of the state. As well there is signification and teaching going on, especially as picked up by the media, a kind of public education about what justice is supposed to be, and what kind of human behaviour is normal and acceptable in a society based on certain popular conceptions of justice and law and order. Significantly involved in this abstract symbolic process is the politics of the state. The public also gets involved in the drama of sending “symbolic messages” in the sense of public opinion and of public confidence, sending messages to the politicians who readily manipulate this message to hold or gain power. Since Joel Fienberg’s day in the States (1970’s), and lately in Canada, our governments have developed some “expressively” repressive crime bills (a surplus of hard treatment...“the harder the better eh?”), built overcrowded prisons based on an “addiction” to the reciprocity code and a misconstrued notion of “truth in sentencing,” responding the public wanting to “see” justice...read punishment...done. Here too, the symbolic and the apparatus (practice) of justice have for the last two hundred years or so have left an indelible expectation (fixed in myth and imagination as well) in the

mind of the public, and also in the minds of those who work in the system. Just think of those who have had to work in the women's prison in Kitchener Ontario with now deceased inmate Ashley Smith.

In addition Wolterstorff uncritically endorses deterrence. Deterrence has been largely discredited in recent criminological research studies regarding rehabilitation and deterrence. Deterrence, *a la* Jeremy Bentham's lightning calculus, (choosing for pleasure over pain) is not a big factor for those on a pathway to criminal behaviour today. The Deterrence concept originating in enlightenment, utilitarian, thought, attempted to put a civilized rational veneer on the open brutality of medieval public torture (for confession) and execution of justice. With the abstract, behind the prison walls, narrowly symbolic nature of the resulting legal process, all citizens under the social contract were equal before the law despite life circumstances. One wonders today how the connection of the supposed deterrence factor works contextually in the reality of those whose lives are not flourishing. Many recidivists today are state-raised individuals, since childhood, often caught in lifestyles of desperate violence, poverty, and addiction, many reflecting collateral damage of modern neo-liberal consumer culture. If by general deterrence is meant that by means of the expressive message sent to deter others, one is using a person as a means to an end, then that is ethically questionable. If deterrence worked, America would be one of the safest societies in the world because they have prisons full of "symbols" showing that "crime does not pay". Deterrence is far more effective when the "harm-doer" participates actively in the "hard work" of making things right, in the way that restorative justice researchers have suggested.

The rehabilitation concept is also flawed, based more on the utilitarian and paternalistic thinking of 18th century utilitarianism, and on a naive belief in the efficacy of the new concepts of solitary confinement, hard labour, and the work-house-factory model of the industrial revolution; and later the medical clinical model, and perhaps today the big-box prison as warehouse. I am not alone in suggesting that we move to educational or therapeutic participatory models, ideally in the community, using a new vocabulary associated with those models, instead of that of the traditional rehabilitation model, still rooted in *lex talionis*.

I agree though with Wolterstorff's main points in that a caringly just response to our neighbour caught in crime is necessary and their worth as human beings requires it. In many places he implies the importance of compassion and heartfelt caring even for the wrongdoer. But the inherent social distance and social categorizing is implicit in his choice of words and labels. In society today, such social categorizing and social distance is evident frequently in Christian circles in how the persons in conflict with the law are regarded and spoken of. As well, there is as outright prejudice, racism, and sexism apparent in our society's focus on street crime (with over-scrupulously perceived issues of drug addiction and other hot button moral topics). Doing justice in love, calls for emotional intelligence - a contemplative stance - and objectivity in our calls for, and "delivery" of, justice. Traditional language and labels such as "wrongdoer", "hard treatment", "reprobative punishment", "rehabilitation," and "deterrence", all serve to trip us up in falling back on habitual, familiar, retributive patterns of thinking. The apothegm, you do the crime, you do the time, has achieved a reified status of truth. There is no love implied. Justice, Wolterstorff states, insists that love and justice be together in care practiced impartially following Christ's example.