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Three intersections in Criminology and Public Theology

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The intersection of criminology and public theology is inevitably concerned with our ideas about the ultimate things, including our ultimate ideas about human nature and our ultimate ideas about humanity's relationship to the spiritual. They include the mystery of our sense of obligation (why should I behave in a particular way?), the relationship between law and morality, as well as perpetual questions of guilt and innocence, of desistance and change and of legitimacy and judgment. My own explorations in criminology and public theology formally began when Nigel Walker set Heinrich Heine's dying words as an assignment for a penology module ('Dieu me pardonnera, c'est son metier'[1]) couched in a friendly warning that I should not be 'too theological'.[2] I am not sure how well I have adhered to his advice since then; for better or worse, my research has included the moral question of 'seriousness of offence' which undergirds the sanction of imprisonment; the role of faith-based units in prisons and the development of 'relational justice' as a Christian-inspired dynamic for criminal justice and prison reform. These three strands are interrelated but, whether singly or collectively, I hope they show not only the different ways in which criminology and public theology challenges criminal justice orthodoxies but also, as I will suggest towards the end, some Christian conventions as well.

Public theology, sentencing and 'seriousness of offence'

The first intersection of criminology and public theology I consider is the problem of 'seriousness of offence'. In England and Wales, under section 1(2)(a) of the Criminal Justice Act 1991, this is the primary ground, in practice, for determining who is sent to prison.[3] According to the Court of Appeal in *Baverstock* [1993] and *Cox* [1993][4] seriousness of offence refers to 'the kind of offence which when committed [...] would make all right thinking members of the public, knowing all the facts, feel that justice had not been done by the passing of any sentence other than a custodial one'.

But there are problems with this formulation. Most obviously, as Andrew Ashworth (1997: 7) asked, '[w]ho are these people, if not the judges and magistrates themselves?' If sentencers effectively keep the content of the test to themselves (Ashworth and Hough, 1996) then the question of moral seriousness risks becoming a virtually unreviewable discretion. How can we know whether the Act is being correctly applied? This is an urgent question given that in England and Wales imprisonment is the worst form of pain that the state is legally allowed to inflict on its citizens.

The problem of 'seriousness of offence'

Related to this problem is the fact that seriousness of offence is a normative issue. It assumes '[v]ices are all alike as they are vices [...] but though they are equally vices, yet they are not equal vices' (Montaigne, 1613/1931: 2). It also assumes we can agree on differences in moral turpitude. But is this confidence justified? Which is worse: pouring paint over someone else's car or killing a suspected burglar in your home? In the US, where surveys of crime seriousness can influence the scaling of punishment, respondents averred that pouring paint over someone else's car was more serious than killing a suspected burglar (Cullen et al., 1982). Another US survey (in fact, the largest of its kind ever conducted) found that robbing a victim of $1,000 at gunpoint was equal to walking into a public museum and stealing a painting worth $1,000 (Hoffman and Hardyman, 1986). For these US respondents, the salient factor seems to be the amount of money involved. Such responses indicate that a society's views of seriousness are ultimately shaped by its underlying values. It is because perceptions of seriousness reflect differing worldviews that seriousness is an 'essentially contested concept'.

One way around this might be to define 'seriousness' without recourse to morality. In fact, one pragmatic definition of seriousness can be found in the Home Office's decision, in the early 1980s, to develop a blueprint on 'seriousness' based on a statistical analysis of current court practice. 'Seriousness' was defined in terms of the status quo. There was nothing normative about this definition of seriousness. It was simply a matter of 'what the courts do'. Needless to say, such definitions do not satisfy because they do not provide the criminal justice process with a 'general justifying aim' (Hart, 1968) in regard to punishment.

Ultimately, seriousness of offence tells us what society sees as most threatening to its survival, and what penalties are appropriate for offending. To this extent it holds up a mirror to the criminal justice process and challenges the law to identify its underlying values. This is not straightforward in a postmodern culture.

Seriousness of offence in biblical law

One way of addressing this, from the perspective of public theology, is to look closely at the conception of seriousness of offence in biblical law. This is because biblical law has a strong conception of seriousness of offence. For while it is true, in general terms, that 'sin is sin is sin,' the punishment for sin in biblical law varies. In addition, biblical law highlights relative rank, significance and primacy in its individual commandments; so much so that the later Rabbinic distinction between 'light' and 'heavy' commands gave rise to a whole exegetical tradition that distinguished between lighter and weightier, smaller and greater commandments. The question of 'seriousness' demonstrates precisely what the prophets[5] and Jesus[6] taught: namely, there are priorities to be observed in responding to God's law. Space prohibits detailed consideration but, in this section, I provide some pointers of how public theology might reflect on seriousness of offence, drawing on my monographical study *The Signs of Sin* (2003).

1. The semiotics of seriousness

First, biblical law has many different ways of punishing offenders, including capital punishment, corporal punishment, social exclusion, reparation and restitution, as well as a wide variety of shaming ceremonies and sacrificial rituals (Burnside, 2003). This means that the concept of seriousness of offence can be expressed in a variety of ways. Even within a particular type of sanction, such as capital punishment, there were a range of registers (such as burning and stoning). This is significant from

a semiotic perspective since semiotics is concerned with how meaning is constructed and with the study of sign structures and sign processes. What is communicated by the choice of one form of punishment over another and what underlying values are thereby expressed? The precise form of the penalty is important in biblical law. It conveys powerful messages to the person on the receiving end of the punishment, as well as to the wider audience who either see or hear about it. The range of punishments meant there was ample room to match the seriousness of the punishment to the seriousness of offence with considerable finesse. Something specific was expressed by the choice of a particular penalty for a given offence.

By contrast, in modern law, 'type of punishment' is not a nuanced register of seriousness, given our heavy reliance on imprisonment as a form of punishment. Of course, when both fine defaulting and mass murder are dealt with by means of custody, we express the difference in terms of length of imprisonment. But this is not a salient register for most lay people, or even for many judges (Fitzmaurice and Pease, 1986). Modern law thus lacks the range of expression that gives seriousness of offence in biblical law its semiotic power. The need to develop other registers is increasingly recognised by penal philosophers (for example, Kleinig, 1991). Reflecting on the different forms of punishment in biblical law and what these communicate about the seriousness of the offence may assist the contemporary search for alternatives to custody.

2. Use of descriptive registers

Second, biblical law employs a wide range of descriptive registers to communicate seriousness of offence. These include characterising certain offences as 'abominations' (for example, Leviticus 18:26) or 'wickedness' (for example, Leviticus 18:17; Deuteronomy 12:29); the use of 'public-example' formulae (for example, Deuteronomy 21:21); statements as to the purpose of the sanction (for example, Deuteronomy 21:21); and some indication as to whether it is a repeat offence (Deuteronomy 21:18–21, 25:8f; Leviticus 21:9). The range of descriptive registers well illustrates the biblical practice of communicating the seriousness of the offence to as wide an audience as possible, in as many different ways as possible.

By contrast, modern law assumes that statutes are written for legal specialists and not for the general public. This limits the communication of legal values. Unlike biblical law, there is not the same expectation that legal values will have an impact on the general public. This suggests ways should be found to maximise the communication of legal values in modern society (for example, through the 'two-document' solution; in which one statute is written for lawyers and another is written for the general public).

3. Use of multiple jurisdictions

Third, the use of different jurisdictions in biblical law (for example, parents, elders, judges, the King) (Burnside, 2003) to communicate different senses of seriousness suggests there is room for greater diversity of authority in modern law. We should not assume the state is always the best punitive agent (Kleinig, 1991: 420) or that the spectrum of behaviour currently addressed by the criminal justice process is appropriate. Such diversity is a limiting factor in semiotic terms. If the same system deals with trivial matters that are not regarded as morally very bad, this will affect how seriously we regard its treatment of the non-trivial.

4. 'Harm' and 'wrong'

Fourth, seriousness of offence is usually seen as comprising two main dimensions: factual 'harmfulness' and normative 'wrongfulness'. Some offences are typically seen as 'more wrong than harmful' (for example, stealing a bicycle from a drive) while others are perceived as 'more harmful than wrong' (for example, a teenager hitting an old woman in the street). In biblical law, however, seriousness of offence is primarily defined in terms of wrongfulness rather than harmfulness. The use of descriptive registers for what would nowadays be regarded as 'victimless' crimes (for example, 'wanton folly' for promiscuity in Deuteronomy 22:13–21) indicates the biblical tendency to express normative, as opposed to purely factual, judgements. For example, the vision of the prophet Ezekiel expresses the horror of idolatry in terms of its wrongfulness rather than its harmfulness (Burnside, 2003, chapter 6). While normative and factual judgements cannot be wholly separated in the Bible (not least given the strong Wisdom belief that all sin has harmful consequences), nonetheless the defining feature of seriousness in biblical law is its wrongfulness rather than harmfulness. By contrast, the results of modern seriousness studies suggest that 'wrong' is defined in terms of 'harm'. Therefore, if an offence does not appear to result in measurable harm, it is not regarded as being wrong or serious.

5. Extent of impact

Fifth, the impact of a crime in biblical law is felt more widely than just its immediate victims. All offences are regarded as crimes against the God of Israel not just those that appear to be directed primarily against Him (such as idolatry and blasphemy). Offences are also regarded as serious if they pose a threat to the wider community (for example, Achan's offence

in Joshua 7) or pollute the Land (Numbers 35:33) or affect arrangements for its division (Deuteronomy 25:5–10), or its inheritance (1 Kings 21). By contrast, modern seriousness studies emphasise the effect of the crime on the victim, to the extent that victimless crimes (for example, narcotics, drunkenness) are not considered serious (O'Connell and Whelan, 1996). Indeed, some offences that warranted the death penalty in biblical law (for example, false worship, dishonouring parents and promiscuity) would today be regarded as victimless crimes.

6. Stigma and character

Finally, in biblical law, seriousness of offence appears to be related to some inherent quality or ontology of the individual. Legal charges and punishments in the Bible frequently stigmatise the offender's character (for example, the accusations in Deuteronomy 21:18–21 of being 'stubborn and rebellious' and 'a glutton and a drunkard') (Burnside, 2003). The offender is not merely punished for what he has done but for who he is. In Deuteronomy 25:5–10, the offender is punished by a change of name which signifies the degeneration of his character (Deuteronomy 25:114–19). By contrast, in modern law, only the deed is criminalised and character is merely a matter of mitigation.[7] Under s.66(6) of the Criminal Justice Act 1993 judges are allowed to take an offender's previous offending history into account in determining seriousness. This may or may not be similar to the charge on which he is convicted. However, the language of s.66(6) is, conceptually at least, 'act-oriented' rather than 'person-oriented'. This may perhaps be the main difference between biblical and modern conceptions of punishment. There is a contrast between the person-oriented punishment of biblical times and the act-oriented punishment of modern law. Biblical law is interested in character and directs punishment against the character of the offender or, to put it another way, it holds the offender responsible for the moral choices he makes that mould his character (cf. Pincoffs, 1973). Modern law, at least in theory, looks at the seriousness of the offence itself and is not interested in the character of the offender.[8] Some penal philosophers and criminologists have argued that character should play an increased role in modern criminal law (for example, Bayles, 1982). In practice, however, it may be argued that all punishment makes intimations concerning a person's character. After all, in punishing, there is an implicit or explicit denunciation or condemnation of the punishee who is deemed to have acted in a morally discreditable manner (Kleinig, 1991: 402).

Public theology and sentencing

Does it matter if seriousness of offence is couched in a moral framework or not? Why can it not be a purely pragmatic exercise, to be applied by judges as they see fit? But attempts to define seriousness without reference to morality leave the question of who is sent to prison extremely vulnerable to political pressure and the pressure of public opinion. Similarly, political statements to the effect that 'prison works' have power to redefine the meaning of seriousness; here, seriousness of offence becomes equated with the number of people the prison service can, or ought, to hold. It is an ironic development given that the idea behind putting seriousness at the heart of the criminal justice process in England and Wales was originally to reduce the prison population. Prior to the implementation of the Criminal Justice Act 1991 (in 1992) the prison population stood at 45,800. Now it stands at 82,748 (as of 2 August 2019).[9] Is this increase of 80 per cent the result of more people committing 'serious' crimes? Or are judges and magistrates sending more people to prison for crimes that would not have attracted a prison sentence nearly thirty years ago (Hough et al., 2003)? If the latter, it underlines the fact that the size of the prison population is a matter of political choice; not of justice, nor of seriousness. The problem of seriousness therefore underlines the need for transcendent values in the sentencing process. Public theology has a role to play if we are not to be left merely with a programme of social exclusion and social engineering.

Public theology, prisons and the development of faith-based units

Another intersection between criminology and public theology is the emergence and growth of faith-based prisons and special prison units. Their existence shows the readiness of prison departments to turn to faith-based communities to assist in finding solutions to the problem of how to manage expanding prison populations in ways that are safe and humane. At the same time they raise a number of questions for national governments and domestic prison services, including the proper aims of punishment in a legitimate and legitimating criminal justice process; the scope for developing more constructive prison regimes; making prisoners more responsible; the degree of permissible contact with prisoners' families and outside volunteers; and finally the relationship of the prison to the community of which it is a part. In Western countries, including

the US and the UK, additional concerns are raised regarding human rights and equal opportunities.

There are many fruitful points of contact here between public theology and criminology, although in this section I limit myself to two questions. The first is theological and arises from what is, on the face of it, the unusual fact that the vast majority of faith-based units (FBUs) have a Christian basis. This is despite the fact that the term 'faith-based' can, in principle, be applied to any faith. Several multifaith and interfaith units in the US include faiths such as Judaism and Islam yet, even here, the overwhelming majority of prisoners describe themselves as Christians. In addition, multifaith and interfaith units are managed by Christian staff and depend for their viability on a volunteer force that is almost entirely Christian. The first, theological, question therefore is: what is it about Christianity, specifically, that leads to this interest in building FBUs in prisons? The second question is criminological and asks: what do such units contribute, if anything, to the running of prison regimes?

Relevance of Christianity

Certain concerns, deeply rooted in the heart of Christian doctrine, may help us to explain the overwhelming dominance of Christianity within FBUs. For although the practice of developing FBUs is a recent development, the following concerns have been a long-standing part of traditional Christian social action (this section draws on Burnside et al., 2002, 2005).

1. Concern for prisoners

No other founder of a world religion identified with criminals in the way Jesus of Nazareth, the founder of Christianity, did. Shocking as it was, Jesus chose to be classed with criminals and to suffer the fate of a criminal. The New Testament describes how the vocation of the Messiah,[10] when fully played out, was to be identified with lawbreakers in his life and to be counted among them in his death. Revealingly, when Luke describes the Crucifixion in his Gospel, he refers to Jesus and 'the two *other* criminals *also*' who were crucified (Luke 23:32, italics added). The only individual to whom Jesus promised eternal life during his own earthly life was a violent robber who was crucified with him: '[…] Today you will be with me in paradise' (Luke 23:43). A pair of criminals on a hill outside Jerusalem formed one of the first Christian communities. Jesus warned his followers to be ready to meet a criminal's end (Mark 8:34–5). In fact,

so thoroughly does Jesus identify with prisoners that Jesus nominates caring for the imprisoned as a criterion of judgement and one of the ways in which Christians may encounter his presence (Matthew 25:31–46). Christianity thus has a deep-rooted affinity with prisoners and hence with the idea of establishing 'communities in prisons'.

2. Concern for human decency

This distinctively Christian concern for prisoners as such is part of a more general conviction that human beings are 'awesomely [and] wondrously made' (Psalm 139:14) in 'the image of God' (Genesis 1:27). This belief, also common to Judaism, is further enhanced by the New Testament claim that, in Jesus Christ, God 'appeared in the flesh' (1 Timothy 3:16). This hallowing of our humanity means that Christianity must be critical of policies and institutions that violate the *imago Dei* (image of God) in the human person. While there is debate as to precisely what the *imago Dei* means (Westermann, 1994) it is frequently taken to include human qualities and capacities, including relationships, choice and responsibility. Imprisonment is designed to take away relationships, choice and responsibility, at least those that might endanger the public (cf. Pryor, 2002). '[Imprisonment] is therefore necessarily de-humanising. That must sit uneasily with the professed aim of prisons to treat those sent by the courts with humanity' (Pryor, 2002:1)

In addition, imprisonment may also take away human qualities unnecessarily and to a greater degree than is necessary to ensure that prisons can be run safely. This raises the broader question of whether the practice of imprisonment is consistent with government claims to protect the public and to deliver justice (Pryor, 2002). The Christian obligation to see the *imago Dei* in all others, including prisoners, may thus make it difficult for Christians to accept aspects of modern penal practice as legitimate. It certainly provides stimulus for Christians to develop prison regimes that promote relationships, choice and responsibility.

3. Concern for relationships

As hinted at already, Christianity is a 'relational' religion, with relational presuppositions and relational doctrines (Cole, 2005). The distinctively Christian belief that God is a Trinity of Persons underscores the conviction that reality involves relationships. As Knox (1988) writes:

> The doctrine of the Trinity is the glory of the Christian religion. It tells us that ultimate reality is personal relationship.

> God is ultimate reality and is the ground of all other reality, and yet God is not a single monad or an impersonal absolute, but God is relationship [...] Father, Son and Holy Spirit [...] Through the revelation of the Trinity we learn that the living God [...] is a God who has relationship within Himself and that the values of relationships ultimately belong to reality in its most absolute form.

As already noted, imprisonment takes away opportunities for relationships and, even where opportunities for relationships remain, imprisonment tends to inhibit real relating, including vulnerability and self-disclosure. Consequently, Christians may seek FBUs as a means of promoting more 'relational' prison regimes where prisoners' relationships with their children, families, representatives of the community and one other are developed appropriately.

4. Concern for spiritual transformation

The fourth concern is perhaps the most important, although it cannot be separated from the others. This is the distinctive Christian belief that spiritual transformation is possible through faith in Jesus the Messiah. Christians believe that in the life, death and resurrection from the dead of Jesus of Nazareth, the purposes of God for his chosen people, Israel, and through Israel, to the world, reached their climax. Christians believe that, in the Crucifixion, Jesus freely identifies himself with the plight of sinful humanity under the reign of death and pays the price for doing so. They believe that on the cross God absorbed the sin, rebellion, pain, suffering, shame and guilt of the world. The New Testament claims that those who stake their lives on Jesus' accomplishments will experience deliverance from evil and from the judgement of God. 'For the wages of sin is death, but the free gift of God is eternal life in Christ Jesus our Lord' (Romans 6:23). Tom Wright (2004: 174) explains that 'Eternal life' does not mean simply 'existence continuing without end' but 'the life of the age to come', the latter referring to the time when God 'would at last act decisively to judge evil, to rescue Israel and to create a new world of justice and peace'. Christians also believe that the resurrection and ascension of Jesus provides proof that Jesus has made a unique way into the presence of God. Those who follow him belong to a new and different way of living that is empowered by the gift of God's Spirit. 'Being himself freed from the chains of death, [Jesus] now lives to free others from all that enslaves them' (Wright, 1999: 100). With this in mind, it is understandable why Christians are motivated to provide an

environment where this spiritual transformation can take place and where prisoners can be encouraged to 'walk out' their healing.

5. Concern for justice

Finally, Christians may offer a distinctive perspective regarding justice and just punishment. Modern political debates are dominated by questions about public management, efficiency and accountability. 'Justice' is styled as a 'commodity to be measured and delivered, like healthcare and education' (Stern, 2004). From a managerialist perspective the function of this service is to serve 'customers' in the form of victims and witnesses. Thus conceived, justice becomes synonymous with prosecution and punishment (Stern, 2004). Escalating the number of sanctions increases the quantum of justice. In this context, criminal justice is dominated by 'the familiar instruments of government policy or public management – legislation, circulars, directories, targets, performance indicators, contracts, systems of inspection and audit' (Faulkner, 2002: 1). Such an approach tends to exclude 'organic [...] dynamic and more inspirational' (Faulkner, 2002: 1) beliefs about justice, including those found in the Bible.

For example, the Hebrew prophet Amos speaking c. 760 BC said: 'let justice roll down like waters, and righteousness like an ever-flowing stream' (Amos 5:24). The belief in justice here is organic and dynamic, like the Jordan River in full flood. It is not a static state but an intervening power: it strikes and changes, restores and heals, and brings life to a parched land. Justice is an active power that breaks into situations of evil to bring freedom. It is a rescuing action by God that puts things right.[11] Justice involves retribution on the sources of oppression, but it is not complete without the liberation and restoration of the oppressed. The New Testament affirms this picture of justice by describing the crucifixion of Jesus as the fullest expression of God's justice (Romans 3:25–26). The cross is understood as the ultimate act of God's justice in the Bible because it deals with oppression and restoration in the broadest possible sense. The New Testament understands the cross as the place where God wins the victory over evil and everything that holds his good creation in bondage to corruption and decay. It is also understood as the place where Jesus is enthroned as King. Christians believe that on the cross Jesus successfully overthrew the ultimate oppressor of humankind (namely, 'the Satan',[12] who is opposed to God's good purposes) and bestows freedom from Satan's tyranny (Romans 8:14–17; Hebrews 2:15–16). The cross itself cannot be separated from Jesus' resurrection and ascension which together amount to God's 'vindication' of his people and his purposes.

Finally, the Last Judgement described in the book of Revelation is presented as an act of divine justice that finally brings the victory of Israel's Messiah on the cross to bear eternally on the whole of creation. In the Last Judgement there is both eternal retribution and eternal restoration. There is judgement on evil (the 'lake of fire': Revelation 19:20–1, 20:10, 14–15) which paves the way for healing, transformation and restored relationships, in the closest possible sense: 'And I saw the holy city, new Jerusalem, coming down out of heaven from God, prepared as a bride adorned for her husband' (Revelation 21:2). Everything that oppresses God's creation is overthrown and everything that seeks freedom from bondage is fully liberated.

In these and other ways, the Bible presents Christians with a challenging picture of justice that invites critical reflection on some of the narrower ideas about justice in modern public services. Justice is thus increased not by building more prisons but by rebuilding more prisoners. Christians are thus motivated to take part in faith-based prison regimes which they believe offer the chance of change, healing and restoration.

A signpost for correctional services

Turning from the theological to the criminological we can also ask what such units contribute to the running of prison regimes. Despite the growth of FBUs little detailed, empirical research has been published to date. This section draws on a pioneering empirical evaluation conducted by a team headed by the author, with Sir Anthony Bottoms as independent adviser, of four-FBUs (Kainos Community) operating in England and Wales.[13] This took place in 2000/01 when the units were operating at HMPs The Verne, Swaleside, Highpoint North (now Edmunds Hill) and Highpoint South (now simply Highpoint). What follows is a small pen-portrait; further details can be found in the original evaluation (Burnside et al., 2002).

In general terms we found that religion is an intensely personal experience and that the manner and extent to which it forms the basis of programmes in prisons must always be handled with extreme care. There were a number of risks: vulnerable prisoners may be exploited (deliberately or otherwise), and lack of sufficient informed consent may violate prisoners' conscience and freedom of religion, leading to accusations of 'brainwashing' and favouritism. Equality of opportunity can be violated. The personal nature of faith-based programmes also means they risk unearthing sensitive issues that staff and volunteers are not best qualified to deal with. Non-uniformed unit staff and outside volunteers

risk being seen by uniformed staff and management as well-meaning but potentially dangerous amateurs. Volunteers and ex-offenders used as part of such programmes are potential security risks. There may be a high risk of tension with the prison chaplaincy. Programmes can also be vulnerable to the individual personalities involved in running them and their relations with key people in the rest of the prison.

At the same time, and at their best, FBUs could be 'the home from which prisoners took on prison life and in which they established and took responsibility for love and forgiveness' (Burnside et al., 2005: 354). They can help to foster a sense of maturity and responsibility and encourage prisoners to take more responsibility for themselves, their families and their communities, as well as greater responsibility with staff. Instead of apathy, stagnation and a fear of deterioration, they offer a place for reflection and the possibility of inner development, in terms of character, creativity, morality and spirituality. They consider what prisoners' strengths are, as well as their weaknesses. They are a chance to reorder personal values and to reconstruct a new identity. They can resymbolise the meaning of imprisonment.

They can also be places of safety and 'real relating' in the often frightening and artificial world of prison. They offer humanity in the face of a dehumanising prison environment, reinforcing pro-social attitudes and behaviours traditionally regarded as weaknesses in prisons. Beyond this, they can be a kind of 'counter-culture', challenging and subverting the prison 'honour code' whereby the strong subdue the weak. Intimidation can be replaced with vulnerability, hostility with friendship, suspicion with trust, and isolation with community. They provide an approximation to living as 'family', often for those lacking any such experience. They provide more opportunities for interaction with people on the outside. They help to create 'permeable institutions', where society can assume visible responsibility for prisoners. They provide opportunities for benefiting others, building social capital within and without the prison walls. They increase the capacity of both churches and prisons to show compassion, humanity and mercy. Above all, FBUs have not merely individual but organisational implications. They have the potential to reform the nature of the traditional prison environment; individual change and institutional change are complementary.

The following remark from a former Kainos governor applies to FBUs as a whole:

> Ignore the spiritual aim, and Kainos can become a self-perpetuating, narrow, target-snatching, defensive and institutionalised corral. Some might say that this should fit

> it nicely for today's prison world. But pay attention to it, challenge it, inject good staff, align its legitimate targets with those of the prison and the community, work hard at getting prisoners to do their own work and realise their spiritual worth, and you have a unique residential community which works as one for others including victims and those who are damaged by crime. (Respondent J, cited in Burnside et al., 2005: 353–4)

On the basis of the positive results gained from the evaluation (including its attitudinal study; Burnside et al., 2002), we concluded that, overall, FBUs 'may act as a signpost to the [England and Wales] Prison Service in terms of promoting standards of decency, humanity and order in prisons' (Burnside et al., 2002: 13), a recommendation quoted on the floor of the House of Commons.[14] Space precludes consideration of other FBUs around the world, including APAC (Association for the Protection and Assistance to the Convicted), Horizon Communities and the InnerChange Freedom Initiative, which I addressed in subsequent studies, although these too provide fascinating avenues for theological and criminological exploration.[15]

Public theology, criminal justice reform and relational justice

A third point of intersection between public theology and criminology is to relate biblical and modern ideas about justice. This was precisely the thrust of the Relational Justice project which I developed for the Jubilee Policy Group in the early 1990s and which became the launch project for the Relationships Foundation, still going strong 25 years later.[16] The Relational Justice project was launched by the then-Director General of the Prison Service, Joe Pilling (at the Tower of London, of all places), and developed the argument that criminal justice was best served when viewed through a relational lens.[17] How might the criminal justice process look if we consistently put relationships at the heart of justice? The relational question ('what impact is this likely to have on relationships?') is one that is asked alongside, and not instead of, what 'works', what is measurable, or 'what value do we get for how much money'? Pointedly, a relational approach may make it hard for us to reconcile current practices with what we claim to do to protect the public and to deliver justice. The criminological, sociological and theological contours of Relational Justice were outlined in *Relational Justice: Repairing the Breach* (Burnside and

Baker, 1994a) and specific policy recommendations for a UK context were advanced in *Relational Justice: A Reform Dynamic for Criminal Justice* (Burnside and Baker, 1994b), while both were developed further in editions of the *Relational Justice Bulletin*.[18] Space precludes an overview of the project; instead, since this volume is concerned with the crossover between criminology and public theology, this section will focus on the biblical roots of relational justice.

Relational character of biblical law

Lord Woolf described *Relational Justice*, at the time, in his Foreword to the book, as 'a radical new approach about which anyone with any concern about our criminal justice system needs to be aware' (Woolf, 1994: 14). The direct inspiration for this radicalism was the relational character of biblical law. Given the interdisciplinary nature of this volume, it is worth sketching briefly what is meant by this.

At Mount Sinai, God's chosen people, Israel, are called not only into covenant relationship with God but also (and as a consequence) to right relationships within the body of the people. Israel's vocation to be 'the people of God' is by definition something that 'comes into being as the precipitate of innumerable well-conducted relationships between individual and individual' (Harrison, 1999: 2, 18), as well as between each individual and God. This is reflected in the law of Leviticus 19:17–18, which includes the command to 'love your neighbour as yourself' (19:18). Jesus' summary of *Torah* in the New Testament confirms that asking the relational question is a valid way of understanding the biblical laws:

> One of them [the Pharisees], a lawyer, asked him [Jesus] a question, to test him. 'Teacher, which is the great commandment in the law?' And he said to him, 'You shall love the Lord your God with all your heart, and with all your soul, and with all your mind' [quoting Deuteronomy 6:5]. This is the great and first commandment. And a second is like it, 'You shall love your neighbour as yourself' [quoting Leviticus 19:18]. On these two commandments depend all the law and the prophets. (Matthew 22:35–40; narrator speaking).

It is not surprising, then, that biblical law should be everywhere concerned with promoting the quality of relationships in society. This is reflected in Hebrew terms such as *tsedaqah* ('righteousness,' although the word itself is not restricted to a concern for right relationships); thus '[w]hen people

fulfil the conditions imposed on them by relationships, they are righteous.' (Malchow, 1996: 16). *Tsedaqah* is the goal of *mishpat* (justice), and both 'justice and righteousness' (*mishpat utsedaqah*) are major concerns of the prophets (for example, Isaiah 56:1). Israel's righteousness is to be seen in her relationship with God, the nations, and at the level of relationships between individual Israelites.

At the same time, the relational character of biblical law is not merely an agenda for improved interpersonal contact; it is also an agenda for institutions. In biblical law, love for God and love for neighbour are meant to influence the design of financial and lending relationships, political relationships, conditions of employment and impact on the environment. Love is institutionalised. The challenge is to see how biblical law advances more than an interpersonal agenda, important though that is, to inform the whole of politics and public administration.

Relational character of biblical justice

Relational justice has its roots in biblical justice. This section provides some examples of the connections that can be made between biblical and contemporary practice (drawing on Burnside, 2005, 2010). The implications of a relational approach for a given criminal justice process at a given point in time depend on current practices and previous penal history. Accordingly, the reform possibilities for those who wish to edge their penal practice closer to a more relational approach will vary. This section primarily references outputs from the Relational Justice project – not to overlook relevant academic criminological literature, but simply to illustrate the links to that project.

1. Seeking justice is part of the vocation of humanity as a whole

The Bible presents the quest for justice as part of the vocation of humanity as a whole. Justice is in the hands of the many, not the few. And since all Israel experienced divine justice first-hand in the form of the Exodus, biblical justice is characteristically 'grass roots.' The people receive the same general instructions to avoid partiality and bribes as do the appointed judges (Exodus 23:1–8). Justice is a communal responsibility (Zechariah 7:9–10). Leviticus 5 suggests that a curse be pronounced against the witness who withheld testimony. In biblical law, witnesses do not simply give evidence or report facts but take responsibility.

From a biblical perspective, therefore, people are reduced from their full humanity when their involvement in the call to justice is taken away

from them. The same is true of communities. No institution can survive without a function, chief among which is the function of doing justice (and providing welfare). Communities are also diminished when they have no role to play in adjudication. Access to justice in biblical law was local, except for certain categories of cases which were dealt with centrally (for example, Exodus 18:26; Deuteronomy 17:8-9; 2 Chronicles 19:10–11). The biblical emphasis on the value of grassroots justice, particularly when it acts as a check on the abuse of centralised power, is relevant in England and Wales. Here, the justice system has become increasingly centralised and susceptible to political control. The introduction during the 1980s and 1990s of the Crown Prosecution Service, the Courts Services Agency, and the Legal Aid Board, combined with the transfer of all responsibility for magistrates from localities to the Lord Chancellor's department (now part of the Ministry of Justice) means that 'what had been a pluralist, localised and part privatised judicial system was now a national industry' (Jenkins, 2007: 186). There is now a need for greater local accessibility and accountability of the justice process, including courts, affiliated services and local prisons (see Compston, 1994).

2. *Seeking justice is a national priority*

Following on from the assertion that seeking justice is part of the vocation of humanity as a whole, biblical law emphasises that the pursuit of justice must be a national priority. Moses charges the Israelites thus: 'Justice, justice shall you pursue [*tirdof*], that you may thrive and occupy the land that the LORD your God is giving you' (Deuteronomy 16:20).

The verb 'to pursue' (*radaph*) is used of Pharaoh's pursuit of the Israelites across the Red Sea (Exodus 14:8). It speaks of the single-mindedness (and even the military precision) that is necessary to secure justice in every generation. In many parts of the world, however, social, economic and political forces push the quest for justice down the national agenda. Garland (2001) argues that the social organisation of Western societies (notably the US and the UK) has moved away from a more inclusionary 'solidaristic' culture to a more exclusionary and controlling one. This is reflected in institutions of crime control and criminal justice, and the result has been a shift away from what has been termed 'penal welfarism' (the prevention of crime, individual correction and social reform) and toward a 'culture of control'. The latter approach identifies an underclass as the source of the problem and suggests progressively punitive ways of excluding and controlling it. Garland argues that this change is not entirely due to rising crime, linking it to a civic culture that has become increasingly less tolerant, less inclusive and less capable of trust: 'The risky,

insecure character of today's social and economic relations is the social surface that gives rise to our [...] concern with control and to the urgency with which we segregate, fortify and exclude' (Garland, 2001: 194).

The result is that issues such as 'crime control and criminal justice have come to be disconnected from the broader themes of social justice and social reconstruction' (Garland, 2001: 199). The need to reconnect them is illustrated by criminological studies which have shown how, for example, police interventions can be counterproductive when criminal justice is not interleaved with social justice (see Sherman, 1992).

3. Popular knowledge of the law

Following on from this, biblical law was in the hands of the people. It was addressed to everyone (Exodus 24:3, 7; Deuteronomy 1:1) and subsequently given wide publicity (Deuteronomy 27:1–3, 31:9–11). All Israel is required to approve the laws and judgments presented to them at the covenant ratification ceremony at Sinai (Exodus 21:1). Likewise, the whole people are taught the law (Exodus 24:12; Deuteronomy 17:10–11) and 'all the statutes' (Leviticus 10:11). The biblical ideal of popular knowledge of the law, combined with a widespread capacity to adjudicate, contrasts with the modern acceptance of law as a highly technical and professionalised enterprise that is focused on the courts. Devolving responsibility to citizens and communities is a major challenge, given the huge presence that is nowadays assumed for the state in criminal justice and which grows continually. Government needs to recognise its inadequacy and the need to draw on the strengths of local communities. There needs to be a formal recognition that the criminal justice process can have, by itself, only a limited effect on the general level of crime. Action is needed by communities, and between individuals as citizens, and that is beyond the scope and capacity of formal criminal justice agencies (Faulkner, 2002). This approach also means that communities need to have more realistic expectations of the justice system and must be prepared to take more responsibility. This means recognising that the official police are only a part of the overall policing of a modern society (for example, Neyroud, 2002). In some democratic countries, expectations of the ability of the state to deal with every social problem need to be scaled down – with agencies working 'with' rather than 'at' troublesome communities (for example, Bowes, 2001). Crime prevention, for example, should flow from engaging people and communities in finding solutions to problems of alienation and dysfunction. At the same time, the challenge is to harness this correctly: increased public participation is not a self-evident good (Crawford, 2002).

4. Social order is founded on the family

Biblical adjudication sees social order as founded on the family. This is the context for developing wisdom, informal social controls and self-restraint. The biblical approach is consistent with the notion that the purpose of government is self-government, in every area of life. By contrast, modern approaches to justice, and especially criminal justice, 'offer an approach to social order that is, for the most part, amoral and technological' (Garland, 2001: 183). Social order is seen to emerge, not from 'moral discipline and obedience to authority [...] [but] smart arrangements that minimise the opportunities to disruption and deviance' (Garland, 2001: 183). We have lost sight of the need for more relational strategies.[19] There is value in seeing crime, as Emile Durkheim (1972) suggested, not just as a crisis but as an opportunity to rebuild relationships and informal social controls. Everyone affected by crime has an interest in the outcome, and so we are required to take account of the needs of the wider community in which the offence occurred. This wider community may include the school, workplace, housing estate, faith group, ethnic group, or whatever other context(s) the victim or the defendant operates while recognising that some of these communities may be in conflict with others.

5. The proactive role of the victim

Fifth, the proactive role of the victim in biblical Israel is different to the place of victims in the modern criminal justice process. There has been a 'victimological turn' in criminal justice polices in many jurisdictions since about 1960, as seen in such initiatives as victim support and victim impact statements (Bottoms, 2003). This means that victims have a greater public profile than has previously been the case. However, this does not necessarily mean that increased value is being placed on victims themselves, for several reasons. If 'the offender's perceived worth tends towards zero, victim's interests expand to fill the gap' (Garland, 2001:181). Victims may also serve a useful function in a pluralistic moral order where we do not agree on right and wrong; 'collective moral outrage more easily proceeds from an individualised basis than from a public one' (Garland, 2001: 200). In addition, emphasising the suffering of victims reflects the values of mass media news coverage. It also helps to drive punitive policies and to sustain the 'war on crime'. Seeking justice for those who are oppressed means ensuring that the criminal justice process and, as far as possible, its outcomes, take sufficient account of the needs and interests of victims of crime, although this may not always be reflected in victim-related policies. There is still scope for increased contact or negotiations

between victims and offenders (for example, family group conferences and community group conferences) where this is both possible and desirable (see for example, Pennell and Burford, 1998). It may also involve giving a much greater role for (imaginative) forms of reparation and (multiple) restitution.

6. Punishment in the Bible is carried out by the community, in their sight and in their midst

Finally, punishment in the Bible is carried out by the community, in their sight and in their midst. Biblical law emphasises sentencer accountability ('Consider what you do, for you judge not for man but for the LORD; he is with you in giving judgement'; 2 Chronicles 19:6). Where the sentence takes the form of corporal punishment, the judge must witness the administration of the punishment at first-hand (Deuteronomy 25:1–3). The sentencer is immediately confronted with the consequence of his sentence. Modern-day communities need to be better informed about criminal justice (for example, levels of actual crime and the effectiveness of different kinds of penalties). They also need to know what sentencing options are currently available and what they mean (for example, mistaken assumptions that modern 'community penalties' means 'planting flowers'). Nor should prisons be 'invisible institutions'. What is done in them is done in our name.

> The central principle should be that prisons are part of society and not set apart from it; that they exist for the benefit of society as a whole and should contribute actively to its health and well-being; that prisoners deserve its compassion and staff should receive its respect. (Faulkner, 2002: 2)

> Citizens need to feel 'some sense of ownership for their prisons, and some responsibility for their prisoners, as they often do for their schools and hospitals [...] [rather than] a means by which that responsibility can be avoided' (Faulkner, 2002: 3).

Policy makers and sentencers should recognise the built-in hunger of the incarceration industry, especially where new prison places are provided by private enterprise. This is particularly urgent where, as in England and Wales, there are large disparities in the ratio of custodial to community penalties. Individual sentencers should know the consequences of their sentences – for example, in the form of court digests (Curtis, 2002) – and,

as the former Lord Chief Justice Lord Woolf suggested, judges should occasionally visit those whom they sentence to custody.

Conclusions: has Christianity been hijacked by imprisonment?

We have seen that 'criminology and public theology' challenges criminal justice orthodoxies in a variety of ways, including the need for transcendent values in the sentencing process, making religious faith the cornerstone of prison units and regimes and drawing on biblical ideas about justice to stimulate criminal justice reform. In these ways, the integration of criminology and public theology challenges the split-level Enlightenment worldview which keeps apart the subjects of 'God and crime' and instead brings them into conversation.

This crossover also challenges some Christian conventions, including general acceptance among Christians of imprisonment as a primary form of punishment. Of course, it is true that Christian attempts to develop FBUs in prisons are pioneering and counter-cultural. Yet even here such initiatives confirm the durability of imprisonment in concept and practice. Although FBUs try to turn prisons inside-out by involving people from the outside such as Christian volunteers and civilians, prisons, as institutions, are resistant to such dynamics. It was for this reason that those in charge of such units had to address the dissent they engendered as well as the suspicion – and, in some quarters, paranoia – of having 'a community within a community' or 'a prison within a prison'. My researches in the US found that maintaining programme integrity in the face of the controlling influence of the correctional institution was a recurring battle;[20] likewise, the early experience of FBUs in England and Wales showed that the prison service saw them as a tool that could be used in places where they were most convenient, rather than in places where they would be most successful.[21] This is not surprising given that prisons are increasingly about management – and we have become very good at managing and controlling prisoners. But it also points to the limits of Christian ability, and perhaps even willingness, to subvert imprisonment as an institution. So, at the point where public theology is at its most counter-cultural, we are entitled to ask: has Christianity been hijacked by imprisonment?

This question gains added significance in the light of our consideration of seriousness of offence. There we saw that biblical law has a broad range of punishments and descriptive registers. Yet the one form of punishment biblical law does not have at its disposal is imprisonment. The only penalty

that comes close is the 'city of refuge' (Deuteronomy 19:1–13) but this is a form of asylum. The absence of imprisonment in biblical law is even more telling when we realise it was used by Israel's neighbours over a long period; famously Joseph was imprisoned by the Egyptians (Genesis 39:20) and Samson was imprisoned by the Philistines (Judges 16:21). Like the dog that did not bark, the silence speaks volumes. Perhaps (and this is pure speculation on my part) the sanction of imprisonment was thought to violate the concern for freedom that is the hallmark of biblical law (and which is why it has had such impact on Western civilisation).[22] Prisoners are made in the image of God and so are volitional, choosing beings. Yet prison takes away choice and we control almost every aspect of their lives.

Finally, in view of the concerns raised by relational justice, Christians must also come to terms with the fact that imprisonment is a highly unrelational form of punishment. Prison acts like a sledgehammer on relationships. Yet in the year ending June 2018 (the latest year for which figures were available at the time of writing) in England and Wales 28,913 people entered prison to serve sentences of six months or less (constituting 47 per cent of all sentenced offenders entering prison during that time) (Beard et al., 2019). This is not to say there are not some offenders, at present, whose crimes are so grave that we think they must be taken out of circulation. But the thrust of the biblical texts should cause us to reflect on whether we have become desensitised to the relational fallout of mass imprisonment. Even in the cases where we feel we must imprison, relational justice reminds us that we cannot deny our relationship with those in prison.

As iron sharpens iron, so the contact between criminology and public theology renews and refines our critique of imprisonment. Fittingly, this was the stimulus to Bottoms and Preston's (1980) ground-breaking volume over forty years ago. May the present volume, like its predecessor, inspire the recovery of tools for the task.

notes

1 Translates as 'God will pardon me, that's His job.'

2 He was, of course, as helpful as could be in seeing it published as 'Pardoning and mercy' in the *Denning Law Journal* (Burnside, 1993).

3 Less prevalent grounds for justifying a custodial sentence are found in section 1(2)(b) (where the offence is of a sexual or violent nature) and section 1(3) (where the offender has refused to agree to a community service order that requires his consent).

4 Baverstock ([1993] 14 Cr. App. R. (S.), 477); Cox ([1993] 14 Cr. App. R. (S.), 481).

5 Micah 6:6–8, Amos 5:21–4, Hosea 6:6, Isaiah 1:11–17, 43:22–4, Psalm 51:16–19 and 1 Samuel 15:22.

[6] For example, Mark 12:28–34. Jesus instructs the Pharisees to go home and reflect on Hosea 6:6 if they wanted to understand the requirements of the law of Moses (cf. Matthew 9:13 and 12:7).

[7] For example, *Attorney-General's References Nos. 3, 4 and 5 of 1992* (Stephen Boyd and others) (1993) 14 Cr. App. R. (S.), 191–5.

[8] Although Michael D. Bayles (1982) argues that a Humean view of criminal responsibility is compatible with current criminal law. In the Humean view, blame and punishment are meted out, not directly for acts, but for character traits, where 'character traits' refers to any socially desirable or undesirable disposition of a person. This is compatible with *mens rea* and with the distinction between acting purposely, knowingly, recklessly and negligently (Bayles, 1982: 8–11). He argues that it is also compatible with the law of attempts and abandonment, while also providing a rationale for the conviction and punishment of impossible attempts as well as providing the broad outlines of a basis for the excuse of mistake (pp. 14-15). It may also help to explain the requirement of 'reasonableness' in defences of mistake of law (pp. 16-17).

[9] www.gov.uk/government/statistics/prison-population-figures-2019

[10] Literally, 'the anointed one' or God's 'king'.

[11] For this reason, some versions of restorative justice acknowledge biblical justice as their source of inspiration (for example, Van Ness and Strong, 2002).

[12] Literally, 'the Accuser'.

[13] The research was conducted for the Home Office, prison service and Kainos Community. For updated accounts of the work of Kainos Community and the findings of reoffending studies conducted in 2012 and 2016 see https://kainoscommunity.org/research-shows-kainos-impact-improving-prison-safety/.

[14] House of Commons Hansard Debates for 9 Nov. 2001, col. 538.

[15] See Chapters 7 and 8 of Burnside et al. (2005). Horizon Communities (the subject of Burnside et al., 2005, Chapter 7) have since been the focus of doctoral research by Abigail Wild (2011).

[16] https://relationshipsfoundation.org

[17] For an updated account see Ashcroft et al. (2016).

[18] https://relationshipsfoundation.org/category/publications/uncategorized/relational-justice-bulletin/

[19] See, for example, the introduction of parenting orders (Robson, 2000).

[20] See chapters 7 and 8 of Burnside et al. (2005).

[21] See chapter 3 of Burnside et al. (2005).

[22] For recent accounts see Berman (2011) and Hazony (2012).

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