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The U.S. Catholic Church and Criminal Justice

The Catholic Bishops of the United States have issued a number of papers in which they seek to articulate a position in the area of criminal justice. These papers are noteworthy not only because the correctional system is in desperate need of fresh voices and alternative visions but also because the Catholic social ethic is grounded in a set of unique understandings of the human person and the social world. What is striking, however, is that the papers themselves are not so much a re-articulation of traditional Catholic responses to questions of crime and punishment as a relatively uninspired mimicry of themes otherwise unfamiliar to the Catholic mind. This essay seeks to analyze the statements issued by the U.S. Catholic Bishops regarding criminal justice, emphasizing the disparity between what historical sources reveal about Catholic attitudes in this area and contemporary church teaching that often echoes the secular liberalism that has been so inimical to Catholic ethics in other contexts.

The first part of the essay offers an analysis of the collective dissonance in criminal justice discourse, fostered by widely divergent premises concerning the nature and function of the correctional enterprise. It will then provide a brief overview of the development of corrections in this country, demonstrating the steady waning of the religious voice in penal affairs. The final two sections will focus on the limited role of Catholicism in determining American correctional policy; a failure at variance with significant developments in its own history.

THE CURRENT STATE OF CORRECTIONS

The current system of incarceration and imprisonment has been severed from an articulated ethical foundation which, as Robert Bellah claims, provides the meaning and motivation necessary to any institution or social system (11–12). Only an organizational pattern based on a set of moral principles, which in turn reveal an understanding of primary questions about human existence, can bear the weight of punishing men and women, whether the punishment is confinement in a narrow cell or referral to one of the currently popular alternatives to prison.

The initial task in the correctional project is to separate the issue of what kind of punishment from the necessary prior questions of the jus-

tification for punishment and what end is to be achieved from the action. If the goal of the correctional experience is a change in the attitude and intention of the offender then, it seems to me, that the change must be willed by the offender. And there is historical precedent to argue that the offender will not “will” even the most well-intentioned innovation unless he or she has a clear sense of the moral value of the program itself as well as a personal admission of the wrongdoing that must be “corrected.”

It is precisely this antinomy between punishment and its moral foundation that has caused the prison system first to drift into aimlessness and then, finally, to lapse into a self-absolving cynicism concerning the very possibility of correcting anyone. Such attitudes assure not only the vacuous state of today’s penal institutions, but have also led to the extension of the net of social control over the entire society. One cynical extension of the utilitarian moral technology of Bentham—which was designed to control the imprisoned by placing them under the omniscient and ceaseless gaze of the jailer, who was in turn under the ceaseless gaze of the superior—is to place the eye of the state on everyone. We are all suspects, to which the roving cameras, metal detectors, and centralized data banks bear witness.

Traditional Christian approaches to crime and punishment have provided the necessary systemic requirements for the renewal of an errant heart. They led to the development of the “time” sentence and the creation of the prison as a humane replacement to torture and other brutal forms of recrimination practiced in former times. Thus, one might expect that Christian voices would provide valuable insights in meeting the challenge of criminal justice, especially in an era when despair is more prevalent than hope in the face of the continued rise of crime and the failure of contemporary strategies to address and rectify it. The fact is, however, that the churches, and in particular the U.S. Catholic Church, have remained largely peripheral to the conversation.

THE LOSS OF RELIGIOUS INFLUENCE IN U.S. CORRECTIONS

The dominant shifts in the development of the American penal system can be traced to the religious community. The workhouse in the eighteenth century, as well as the penitentiary and the reformatory in the nineteenth century, all bear the undeniable marks of religious inspiration. Each new correctional foundation was an expression of the dominant theological and ethical paradigm of the age, beginning with the theocentric model of communal admonition and re-integration developed by the Puritans (Erikson; O. F. Lewis).

The penitentiary cannot be understood apart from the social frenzy of the evangelical, millennial crusades of the early nineteenth century as they sought to establish God’s reign on earth and bring to conversion

the individuals severed from the discipline of church and community. The history of the penitentiary is too complex to examine in detail, but these structures reflected the ethical presuppositions of the religious groups who dominated the areas where they developed. Despite their ambiguous history, penitentiaries (especially those in Quaker Pennsylvania) often provided the offender with a clear understanding of the nature of punishment, its goal, and a regimen which complemented the moral logic. And, most importantly, they were successful in returning regenerated members to the body politic (W. D. Lewis, 1965:113; Rothman, 1971:94).

The evolution of thinking that led to the development of Progressivism in the late nineteenth century and to the attendant development of the reformatory contained the seeds of the demise of religious leadership. Progressivism, with its positivist emphasis, fashioned a secular analogue to the evangelical millennial kingdom. The optimism that once characterized the evangelicals, who saw the reform of society and the religious conversion of misguided individuals as the result of new institutional constructs, was translated into a belief in the inevitable reign of peace and progress through the application of the principles of natural science to the problems of society. The Progressive Era marked a time when the American government sought to absorb and define the religious project (Rothman, 1980). While governments have sought to do this often in history, both Weber (1978:901ff.) and Reinhold Niebuhr remind us that their monopoly on the use of force and the self-serving nature of their designs make them utterly incapable of usurping the religious function or articulating any morality save collective egoism.

Progressive ideology, however secular in its rhetoric, was the inevitable outcome of a strain of Protestant thought that followed in the tradition of Kant and Schleiermacher as much as Comte and Herbert Spencer. Many religious leaders following the Civil War had become disenchanted with the explanatory power of evangelical revivalism in the face of complex social problems caused by industrialization and urbanization, not the least of which was a dramatic rise in rates of incarceration. These religious innovators turned to the methodical analysis of empirical and statistical data as aids in understanding the nature of and remedy for social deviance. They were the liberal forerunners of the Social Gospel movement, which fused millennial optimism with scientific analysis and willingly removed religion and religious symbols from the effort to build the perfect society.

The evangelicals, for their part, became incapable, for different reasons, of forming a critique of the American institutional structure. They continued to insist on an emotional, public conversion to Christ as the answer to the ills of the nation and of the criminal. They had become less politically active by the time Dwight Moody began his ministry in

the late nineteenth century and soon moved to a greater combative position with their liberal counterparts. Although present in force in today's penal institutions, by and large, they continue to see the fate of the prisoner as measurably in his or her own hands, in terms of a personal conversion rather than a systematic critique of the criminal justice enterprise.

CATHOLICISM AND U.S. CORRECTIONS

The U.S. Catholic Church played a minimal role in the development of the penal system in this country. There are several reasons that account for this limited involvement, not the least being a pointed anti-Catholic bias which accompanied the growth of the Church throughout the period in which the American correctional structure and ethos were fashioned.

All of the Nativist pressures notwithstanding, there is abundant evidence that American Catholicism was too preoccupied with developing its own identity, witnessed in repeated internal disputes over ecclesial organization and autonomy from Rome, to render a meaningful judgment as to the treatment of offenders and the evolution of American penal theory. By and large the Catholic Church reflected the concerns and theological trends that preoccupied the dominant Protestant churches. Post-revolutionary Catholics, following John Carroll, largely supported a democratic model of authority, local autonomy, and the separation of Church and state; in other words, a congregational pattern of church polity. As the evangelical revivals galvanized the Protestant churches in the 1820s and '30s, pious Catholics responded with the "cult of Jesus" spirituality and with the initiation of the parish mission, a Catholic effort to imitate the Protestant revival (Dolan, 1978:xix). As the first seeds of division entered the Protestant churches in the 1840s with the growth of sentimentalism and romanticism, similar trends developed among Catholics. The birth of devotional Catholicism in the 1840s featured the same traits found among Protestants, what Ann Douglas has called the "feminization" of American culture: emotionalism, sentimentalism, and docility (6-13). Thus even if the Church had decided to enter into the public debate on correctional issues, history suggests it would have added little to the responses of its Protestant counterparts.

The occasional critical Catholic responses to political issues came when members of the community sought to speak from a paradigm informed by the Church's traditional social ethic. The Aristotelian/Thomist frame of reference that dominates Catholic social thought urges the Church to maintain a watchful eye over secular politics even as it respects the natural basis of the political community. There is within this tradition a compelling ecclesial responsibility to offer a moral voice over against the state, and to call individuals to a moral accounting of

their actions in terms of principles in which individual flourishing is based on a conception of the common good.

Despite this tradition, the particular character of American Catholicism has led John Tracy Ellis to remark that contemporary Catholics have become “less and less distinguishable from other Americans, and it would be a foreign visitor of extraordinary powers of observation who could sort them out in the body politic” (292). This observation and the history that preceded it go a long way toward explaining the well-intentioned but ineffectual attempts made by the National Conference of Catholic Bishops (NCCB) and its social arm, the United States Catholic Conference (USCC), to inform and correct the system of criminal justice. As with Catholics in the nineteenth century, the Church has operated largely within a context dominated by the ethical insights of its social contemporaries. Thus, in the area of corrections, it tends to provide a lukewarm echo of themes more germane to Protestant and civic republican ideologies.

In 1973 the USCC published “Rebuilding Human Lives: The Reform of Correctional Institutions in the ‘70s.” It came on the heels of the devastating riot at Attica prison in New York. While basing itself on a proper warrant to speak on such matters (“crime and punishment are pre-eminently moral issues”), the document failed to engage either in historical analysis or provide a theoretical foundation in dialogue with Catholic tradition. The bishops question the existence of the prison without providing an explanation of its meaning and justification (345). They call for rehabilitation without defining what it is or under whose terms rehabilitation is to be accomplished (*ibid.*). They call for treatment programs though hundreds of studies at the time revealed their results to be ambiguous at the very best, often producing higher rates of recidivism (Martinson, 1974). This critique is not meant to imply a rejection of prison alternatives, but is a reminder to those who would reform the prison that they must confront two serious projects before they can carry out their task: to re-form an institutional system one must know how it was formed in the first place; and one needs to enunciate clearly a theory of correction, understanding that there are competing ideologies (rehabilitation, retribution, deterrence, incapacitation) that are either inappropriate within the Catholic framework or often work at cross purposes.

An example of such theoretical confusion on the part of the bishops is their affirmation of the concept of deterrence. While crime prevention is clearly a laudatory goal, deterrence itself is the hallmark of a utilitarian penal framework, perhaps best embodied in the influential writing of Cesare Beccaria (1963). Despite his famous assertions that criminal justice must be swift, certain, rational, and moderate in punishment, his utilitarian formula is based on a barren teleology resting on func-

tional/mechanistic foundations. Rather than an end fashioned from a moral ontology, which defines the meaning of human life and human community, deterrence is based on a means-end calculation, placing justice within a calculus determined by the self-interest of the acting subject. It is clearly at home in a capitalist framework in which pragmatic and materialist decisions predominate, but deterrence needs a careful and nuanced analysis to fit within the Catholic framework.

In partially affirming a logic of incapacitation (345), the bishops revive the positivist penal philosophy of which incapacitation was a principle component: that the offender was to be molded and reshaped to the beneficent values and work habits of a market economy on a case by case basis by an array of penal professionals and specialists. Those who could not conform to the demands of productive citizenship were to be detained or incapacitated (von Hirsh, 1985:5). The positivists held that the offender's condition was not his or her fault *per se* but the result of hereditary and environmental factors which could be supplanted by education. This perspective informed the progressive ideology of peace and progress through scientific method which, it might be added, viewed religion as a superstitious anachronism. Many liberal Protestants and Catholics gladly acceded to this ideological shift since it fit their belief that secular American institutions were the bearers of the divine plan for humankind.

An example of this tendency to combine unexamined and often contradictory criminal justice strategies is found in a statement by the bishops of Louisiana: "We want to release energy and creativity in pursuit of ways to reduce crime (deterrence?), protect the innocent (incapacitation?), punish the criminal (retribution), work for change in offenders (rehabilitation) and yet consistently stand for the respect for life even of those who treat the lives of others with disdain" (95). The bishops of New Mexico, in like manner, call upon the state to be retributive ("punish wrongdoers"), seek "the rehabilitation of inmates," follow the positivist logic of treatment ("therapeutic communities") and, in a final admonition: to change "the image that our prisons and jails are 'schools of crime' rather than environments conducive of reintegrating offenders into society" (585, 587).

The statements of the bishops over the last quarter century have been awash in a sea of good intentions but seem oddly out of step with Catholic tradition and underscore the theoretical confusion that marks the secular debates going on around them. Certainly, the bishops seem unaware of the fact that one of the most humane innovations in the history of penology was the development of the time sentence as opposed to sanguinary punishment. This led to the attempt to create an environment where silence, work, and spiritual counsel affected an internalization of the values that could rehabilitate, or convert an errant

heart. The irony, not to be ignored, is that all of these insights were developed within the Catholic Church.

CATHOLICISM AND CRIMINAL JUSTICE

The justification of punishment for wrongdoing has a long history in Catholicism, grounded in the Bible and restated throughout the development of the Church especially by way of its sacramental form of penance. There is an organic relationship between penitential expiation and compassionate forgiveness. Theological ethics creates a bond between punishment and reconciliation that insists on the subjective assent of the offender to the particular penitential discipline. A further justification is located in the development of the Aristotelian and Thomist concept of virtue instilled through repetitive practice and framed by a vision of the common good strengthened through the punishment of offenses against the community. The tradition is exemplified by St. Thomas whom the U.S. bishops quote in their 1980 pastoral against capital punishment: "In this life, however, penalties are not sought for their own sake, because this is not the era of retribution; rather, they are meant to be corrective by being conducive either to the reform of the sinner or to the good of society, which becomes more peaceful through the punishment of sinners" (IIa, IIae, q.68. a.1).

The formal involvement of the Catholic Church with the correction and reintegration of the offender by a combination of prayer, work, solitude, and spiritual counseling goes back at least to the Rule of St. Benedict. In that treatise the offender is to be admonished secretly for initial instances of misconduct, followed by public chastisement if errant ways are not corrected. Finally, if the intransigence continues, he is to be "excommunicated" (i.e., cut off from the common life of the monastery, working, praying, and eating alone in his cell "in penitential sorrow"). Always the intention of the punishment was the re-instatement of the erring brother to the community with an understanding that the abbot should assure there is comfort and solace given to the penitent "lest he be swallowed up with overmuch sorrow." Benedict remembers the words of St. Paul, "let charity be strengthened towards him, and let everyone pray for him" (75).

Virtually all of the "innovations" that have informed the history of penal practice evolved from these and similar beginnings. One finds a justification for punishment (largely biblical and communal). The meaning of punishment is expressed by an appeal to the moral law which was held to reside within the offender, that he or she may come to own their guilt. Included in this component of the process was the important Catholic assumption that, despite external influences, human beings are the authors of their own acts and can, with appropriate reflection and discipline, redirect those actions toward ends in

harmony with the common moral vision. The final element was the environment, the cell, in which the work of reformation could be affected.

As early as 1487 the Alexian brothers had the habit of receiving certain types of juvenile delinquents for care and reformation within their monasteries, containing sections called "bettering houses" (Sellin, 1944:18-19). One of the precursors of modern penology was Fra. Filippo Franci who in 1653 established a hospice for the abandoned boys who slept and begged in the streets of Florence. Franci developed such innovations as the monitorial system (peer counseling) and probation, which did not enter the American penal milieu until the early twentieth century. Franci's success with homeless children caused many families to commit their delinquent youth to his care. He developed a correctional department within the hospice. The young men were placed in cells whose purpose was to facilitate reformation through prayer, work, and the screened visits of spiritual and moral counselors (Sellin, 1927:109). Franci took great pains to protect the reputation of his charges that they might "retain their good name," exacted no corporal punishment, and achieved such success that the institution was unable to contain all those who sought to utilize its regimen. After the death of Franci it continued to serve not only "sons of families of ordinary means but sons of rich and noble parents as well" (*ibid.*, 110). It was eventually taken over by the civil government which by ducal decree abandoned the cellular format in 1786. Sellin says that Franci's use of cellular segregation was "the first practical attempt to use this mode of treatment for the avowed purpose of correction and reformation" (*ibid.*, 112).

Jean Mabillon, the noted Benedictine historian of the seventeenth century, wrote an essay in the 1690s on monastic prisons. Once again, the meaning and justification of the penal experience were situated against the horizon of the Catholic moral tradition. Mabillon's description of the monastic prisons anticipated the organization of one of the most influential penal institutions ever constructed: the Quaker sponsored Eastern State Penitentiary at Philadelphia. Sellin says of Mabillon: "As to his ideas on the internal regime of prisons, all that can be said is that we are still striving to put some of them into practice" (1927:593).

Clement XI constructed possibly the first civil penitentiary, St. Michael's, in Rome in 1704. It certainly contained the first cell block, added the ingredient of work in common (which was taken up in penitentiaries in the United States and in many other countries) and, despite its ambiguous history, was seen as a major innovation in an otherwise brutal period of penal evolution. The argument of Clement in his "motu proprio" of 1703 was inscribed in one of work rooms: "It is of little advantage to restrain the Bad by Punishment unless you render them Good by Discipline" (Sellin, 1929:534). The experiment at St.

Michael's was lauded as exemplary by the most famous of the European prison reformers, John Howard, whose distaste for Catholicism as an English Nonconformist would not have led him to be favorably disposed to the institution.

Sellin sums up my intent in this section of the essay when he maintains that "the real sources of our entire penitentiary system" must be looked for "in the Church" and specifically in its harmony of silence, isolation, and internal conversion "as the true road to salvation" (1927:600-1).

Against this rich and methodologically consistent background, statements such as the following made by the Committee on Social Development of the USCC and the bishops of New York State seem at best uninformed: "Our present prison system clearly does not reflect Christian values. . . . Prisons communicate a message of hopelessness and of community anger devoid of concern" (1981:234-35). "State prison facilities, by their nature, breed violence, frustration and low self-esteem" (1983:572).

CONCLUSION

The prison system is in many ways a Catholic innovation, but is finally, like all institutions, a projection of the deeply held beliefs of a people as articulated and fashioned by the religious community. The system in this country was inaugurated and guided by the dominant Protestant religious community: evangelicals directing the development of the penitentiary, and liberal Protestants providing the energy and vision for the reformatory. That leadership allowed itself to be replaced by a positivist mentality, able to amass impressive and useful analytical data on the offender and all aspects of the correctional process, but unable to provide the necessary justification and meaning for the correctional experience.

The American Catholic Church has issued several statements in recent years that have basically expanded on the obvious tragedies and inconsistencies of the penal system. They have had little, if any, effect and in some ways have only added to the confusion of contemporary corrections. While this may not be troubling to the average citizen it is of considerable consequence to the over one million men and women who currently dwell in penal institutions that have lost the ability to articulate the reasons for their existence save in the most crude terms of social control.

Critiques of modern correctional philosophy, particularly those by the religious community, need to do more than simply remind us of the obvious, that prisons have become dehumanizing. A religious vision in the national debate on corrections would need to enunciate a moral program of reformation, consonant with its historical inheritance, that

offers some solace to those who face the necessary problem of punishing men and women against their will.

The prison system needs a clear statement of why it has the right to punish, explained not in the failed terms of vengeance or self-interest but in terms of the meaning of human life and human community. Only with that in place can the meaning of the reformatory program come into focus for the offender. It has been the argument of this essay that the American Catholic Church, despite the resources at its disposal, has failed to provide significant help in addressing that crisis.

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