

A DIFFERENT PROMISE: CATHOLIC SOCIAL THOUGHT AND CRIMINAL PUNISHMENT IN AMERICA

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Punishment as a response to deviant and criminal behavior is ubiquitous and multi-dimensional in nature. Retribution as a dominant philosophical rationale governs the imposition of criminal punishment in contemporary American society. There is a need to understand punishment in terms of what it symbolizes. This article proposes an approach that integrates critical insights of social theory and the principles of Catholic social thought to understand the meaning of punishment. Themes of power relations, person, and order reveal not only deeper dimensions of meaning, but contradictions inherent in current systemic penal practices and insight into changing trends as bases for policy initiatives.

Introduction

Criminal punishment in the United States has predominantly reflected the classical model of retribution for the last 35 years and serves as the foundation for mandatory-sentencing policies and guideline-sentencing systems. It is governed by the mantra, "Let the punishment fit the crime," and its revised form of "just desserts." Its focus is on the behavior of the offending person, and the goal is to maintain social order by a more exclusive reliance on crime control. Such a trend has generated degrading forms of implementation that, according to Whitman (2007), represents a distinctive American experience.

A punitive or retributive model of punishment as a response to rule-breaking has statistical and socio-philosophical implications, and invites the question: How well is such an approach to punishment in criminal cases working? More than 2.25 million prisoners are presently housed in Federal and State prisons and local jails. This represents an increase in annual prison population growth of almost 3.5 percent since 1995 and increasing State expenditure on prison construction (Bureau of Justice Statistics, 2006). Sixty-eight percent of prisoners were rearrested within three years after release (Bureau of Justice Statistics, 2002). Furthermore, the rates of incarceration in the United States are not

evenly distributed among racial, ethnic, and economic class groups (Haney and Zimbardo, 1998). And, in a global context, the United States has the highest number of prisoners and the highest rate of incarceration in the industrial and developing world (Walmsley, 2003). Accordingly, a retributive focus suggests diminishing returns both socially and economically.

Accordingly, there is a need to explore a dimension of criminal punishment that transcends a focus on implementation and addresses the idea of what punishment symbolizes. Prior to the 1970s, punishment was studied by penologists in terms of the administrative and technical issues it presents (Garland, 1990, 2). In this regard, focus on the systemization of punishment was based on the presumption that behavior which violates social norms should be punished and that the right of the State to impose punishment rests, in part, on its responsibility to insure social order. During the past thirty years, however, the study of wider dimensions of punishment has been evident through literature that reflects broader, multi-dimensional perspectives (See Foucault, 1977; Jacobs, 1977, Garland, 1985, 1990, and 2001; also, Hampton, 1984). It is in this multi-dimensional context that a deeper understanding of the meaning of punishment in its relationship to offenders and society is to be found.

This article will explore the meaning of criminal punishment in America in terms of insights revealed by social theoretical perspectives and Catholic social thought.

Three questions will be addressed: first, what do social theoretical perspectives contribute to understanding the meaning of punishment in terms of relations of power, person, and social order; second, what do the principles of Catholic social teaching contribute to understanding punishment in terms of its meaning; and third, what current trends and policies reflect the contribution of the principles of Catholic social thought?

The Meaning of Punishment and Social Theory: Relations of Power, Order, and Person

History and culture reveal a connection between punishment and society (Friedman, 1977; Nonet and Selnick, 1978). And, in this regard, social theory establishes a context to understand what criminal punishment in America symbolizes from social structural, interactive, and historical perspectives.

In contrast to a traditional focus on techniques of punishment, a social theoretical approach reveals insights into the idea of power and

its relationships, social order, and person, that are inherent to the meaning of punishment itself (see Garland, 1990, 2). Such a focus provides the opportunity to include contributions of Catholic social principles to understand criminal punishment and evaluate criminal justice policies at present and for the future.

According to Garland (1990), the sociology of punishment has not been a consistent theme in the development of social thought. The works of Emile Durkheim and more recently Michel Foucault, however, represent critical and distinctive roots for the analysis of punishment in terms of its symbolism. More specifically, Foucault's analysis of the practices and instrumentality of punishment was undertaken with an emphasis on control and domination. In contrast, Durkheim's emphasis was non-utilitarian and focused on punishment as the expression of shared values and sentiments of a society. In essence, then, while Foucault represents a more rational approach to understanding punishment, Durkheim describes punishment as sentiment-driven. Furthermore, the interactionist approach of Max Weber suggests that the rational or utilitarian pursuit of anything need not exclude values (see Garland, 1990, 7). These social theorists, then, especially Durkheim and Weber, suggest that the meaning of punishment is not reducible to control and domination that characterize the politicized view of retributive punishment in contemporary American society.

Emile Durkheim's View

Durkheim's thematic focus was on forces rooted in social structure that explain order and disorder in society (Coser, 1971, 133). More specifically, norms and laws serve as necessary constraints on social behavior to ensure cohesion founded on shared values of the social group, that, in turn, promotes a lower degree of deviance (Durkheim, 1951, 252). It is interesting that in his earlier writings, Durkheim emphasized the significance of external constraints in the form of rules and laws on behavior. However, in his later works, he referred to the effect of internalized constraints, in the form of values and beliefs of the social group, on the behavior of individuals (Coser, 1971, 129; Lukes and Scull, 1983, 59).

In *The Division of Labor in Society*, Durkheim emphasized the relationship between value consensus and social cohesion by his development of "mechanical solidarity" that characterized bonding in earlier societies, in contrast to "organic solidarity" in modern, industrial societies. Furthermore, law was described as the "visible symbol" of solidarity (1964, 64). For example, in earlier societies, law assumed a more repressive character because customary beliefs were synonymous

with social norms and the survival of society demanded “intense social regimentation” around those norms and beliefs (Coser, 1971, 136). Such repressiveness was essential for the preservation of a strong “collective conscience” within the social body (Durkheim, 1964, 79, 81, 86). In modern societies, wherein a greater sense of interdependence of members based on mutual rights is evident, law assumes a restitutive character.

In this evolution of society in terms of its structural unity, the themes of “punishment” and “crime” can be explored. According to Lukes and Scull (1983), punishment must be understood within Durkheim’s development of law from repressive to restitutive stages (19). At the same time, however, repressive, penal expression of law is not exclusively characteristic of earlier societies. In his later writings, Durkheim emphasized that a punitive expression of law is necessary even in modern societies where individualistic values pose a threat to social unity (6).¹

According to Durkheim, punishment is characterized by vengeance, but this trait must be understood in different social contexts. For example, in earlier societal eras, vindictive retaliation was exercised personally by the victim or the victim’s family against the offender. In modern societies, Durkheim describes punishment as the outcome of a system of laws that represent the moral consensus of society, where crime is defined as a public wrong. As a result, the State emerges as a substitute for victims of crime, with the authority to impose punishment on criminal behavior (in Lukes and Scull, 1983, 64). However, in Durkheim’s view, punishment in modern society is not intended to alienate the offender from others but to assist honest men and women in repairing the harm done to moral values of all individuals by the criminal act (69).

This is a basis for Durkheim’s insistence that crime is “normal.” Unlike his earlier writings, in which he emphasized that such normality was the result of the inability of norms and laws to totally regulate and constrain behavior, Durkheim, later, in *Rules of Sociological Method*, clarified that the values violated by crime are present in every individual and that laws, therefore, serve to uphold the moral consensus in society (1966, 71; also, see Lukes and Scull, 1983, 4).

Based on the foregoing, an insight is revealed regarding the criminal offender: He or she is not considered an alien being but rather plays a normal role in social life and becomes a means by which punishment serves to reinforce social cohesion in society (see Lukes, 1983, 75). As a result, emphasis is placed on the criminal offender in relation to the unity of the collective body rather than as an individual in need of rehabilitation.

According to Garland (1990), Durkheim's idea of punishment is distinctive in that "he draws attention to the non-instrumental aspects of punishment—its emotional aspect, its social origins, its expression of values and culture and its effects beyond the relationship of controlled and controlling" (9). Durkheim's emphasis on the non-rational dimension of punishment was further clarified by him in an essay he wrote in 1895, "Criminality and Social Health," that appeared in the *Revue Philosophique*, in response to a criticism published by sociologist Gabriel Tarde that ridiculed Durkheim's reference to the normality of crime and therefore of a repressive legal system that it spawned. Durkheim clarified his idea of the repressive nature of penal law by stating that it did not represent punishment as more severe, but rather, that prosecution of crimes would be undertaken more aggressively (in Lukes and Scull, 1983, 78). This clarification perhaps explains Durkheim's description of punishment as representing "sentiments of sympathy which we feel for mankind in general" and which leads to a greater sense of compassion for victim and offender alike! (94) Therefore, a sense of interconnectedness between offender and society is maintained (see 95).

In an article, "Two Laws of Penal Evolution," published in 1901 in the *Annee Sociologique*, Durkheim transcended the idea that punishment should be a means for reciprocal retribution (that suggests the mantra, "If you play, you will pay," reflective of the classical model of retribution governing the administration of criminal punishment in contemporary American society). Rather, he states that commonly shared values serve to protect human dignity: "If we reprove acts which lack humanity, it is because they offend the sentiments of sympathy that we have for man in general . . ." (in Lukes and Scull, 1983, 124). As a result, a more exclusively retributive penal policy would represent a limited approach to punishment given the relation of the offender to the social body.

Durkheim's view provides a means of transition to further insights of social theory regarding the meaning of criminal punishment. In his theoretical scheme, the evolution of law to a "less violent and less harsh" system than earlier societies does not preclude the presence of punishment (Lukes and Scull, 1983, 131). However, punishment is directed to the maintenance of social solidarity and implies, at least, the need to respect the offender's humanity. Durkheim's structural focus, however, prevents him from addressing more underlying implications of the ruler-offender relationship that are necessary to critically evaluate the retributive rationale for punishment.

Michel Foucault's View

Foucault does not propose a general theoretical perspective but rather a method to critically analyze the current state of criminal punishment in terms of its practices (Gutting, 2005, 2). His approach distinctively permits him to conduct his critical inquiry based on the premise that historical development of any event may not be positive in its outcomes. For example, in *Discipline and Punish* (1977), he focuses on the history of prison reforms aimed at offender rehabilitation and a more humane penal experience. Foucault, however, questions the effect of such reforms, based on high recidivism rates in modern society and suggests that the development of punishment in fact only yields a revised “specific and political means to exercise power and control” (1977, 23; also, see Shumway, 1989, 116, 136; Han, 2005, 205; Gutting, 2005, 205, 21). Accordingly, Foucault differs from Durkheim who studied punishment in social structural terms.

Foucault's emphasis on the theme of power in his analysis, however, provides insight into the nature of the human person who is controlled. He maintains that historically the power to punish developed from being more centrally focused on the crime in earlier eras to a more fragmented approach that is consistent with rehabilitative goals in modern society. In this regard, punishment now involves not only judicial authorities empowered to punish but parole, psychiatric, and correctional authorities who conjoin to assess and determine the competency of the offender, the presence of mitigating factors for the imposition of punishment, and determination of when the offender, as prisoner, is deemed rehabilitated and eligible for early release from prison. However, for Foucault, at the heart of this process are changing power relations that address the offender as a body for punishment (Gutting, 2005, 21). Shumway (1983), in a critical interpretation of Foucault, maintains that the evolution of punishment from brutality to prisons and reform reveals more differences than similarities. In earlier eras, the body was the target or object for pain; in more modern eras, the body is perceived in terms of rights that are suspended by punishment to correct one's soul (122). Therefore, punishment assumes a more individualized—but also an impersonal—focus to dissuade the offender from repeated criminal behavior (117).

“Discipline” also constitutes a central theme of Foucault in relation to crime and punishment. His reference to a soldier, (perceived as a perfect body type) in military training for illustrative and analogous purposes, provides further insight into the nature of the offender. For discipline affects the body in a two-fold and contrasting manner: While it enhances the forces of the body to function more effectively in

assigned tasks, it also controls those forces by rendering the body more “docile” to domination: “. . . in treating the body as a machine, discipline uses it more productively than did earlier formations, but at a price” (Shumway, 1983, 124-125).

In the context of his emphasis on power and domination as central characteristics to the meaning of punishment, Foucault’s reference to penal reform as more humane than its brutal past is especially significant to the meaning of punishment. According to Foucault, the “humanity” of modern penal systems does not refer to a trait of the offender but rather to more calculated and proportionate sanctioning of offenders:

If the law must now treat in a “humane” way an individual who is outside nature (whereas old justice treated the “outlaw” inhumanely), *it is not on account of some profound humanity that the criminal conceals within him, but because of a necessary regulation of the effects of power.* It is this “economic” rationality that must calculate the penalty and prescribe the appropriate techniques. “Humanity” is the respectable name given to this economy and its meticulous calculations. (1977, 92, emphasis added.)

Paradoxically, such a rational-based economic and technical view of humanity can serve to “destroy human plurality, spontaneity, . . . and individuality” (Foucault, 1977, 135). It also can constitute justification for the “warehousing” of prisoners who are serving “just desserts” sentences in the contemporary American criminal justice system. As will be developed later in this paper, Catholic social principles challenge such a political-economic understanding of “humanity.”

Foucault’s reference to a 19th-century ideal, hypothetical, and experimental prison design, known as the “Panopticon” and conceived by English social philosopher Jeremy Bentham, both illustrates and reinforces the impersonal effects of discipline on the offender (1977, 201-202).

Bentham’s design calls for a circular building with an open yard in the middle. In the center of the yard, there is a tower with wide windows that make visible the whole of the surrounding building. The cells in this building each have two windows: one on the outside wall allows light into the cell, while one facing the tower makes an inmate visible to the

keeper in the tower who cannot be seen by the inmates. The panopticon thus creates the illusion of constant surveillance. (Shumway, 1983, 133.)

While Foucault has been criticized for naively accepting such a design as representative of prison reform in contrast to the brutalization of offenders in earlier eras, several corollaries regarding relationships that are endemic to the nature of punishment can be identified here. First, prison cells, designed for “individual” treatment, serve to reinforce the labeling of inmates as “abnormal” in contrast to “normal” law-abiding citizens. Foucault (1977) concluded that while inmates occupied their own cells, they were reduced in nature to a “collection of individuals” (1977, 201). Therefore, treatment of offenders as individuals in such a setting is problematic. Second, even though the prison system represents a more efficient use of power, its isolation, control, and surveillance of inmates serve as expressions of sovereign superiority and suggest the diminishment of inmates as persons, in contrast to “normal” law-abiding citizens who do not need to be isolated (Foucault, 1977, 200, 202). Third, according to scholarly critiques, the disciplinary environment of the prison, characterized by the use of timetables and individual cells to facilitate supervision and correction of inmates, in fact promotes little actual supervision of inmates but, rather, serves as means of control (Alford, 2000, 134, 131).

Such an impersonal view of the offender is a necessary consequence of Foucault’s thematic emphases on power and domination, and also critically reflects a more exclusively retributive interpretation of the idea of punishment.

Max Weber’s View

What distinguishes the theoretical perspectives of Durkheim and Foucault are their different “methodologies of understanding” (see Gerth and Mills, 1981, 57). Foucault’s rational emphasis on punishment as a tactic of control, even in its state of “reform” in more modern societies, does not permit serious acknowledgement of the influence of forces that are non-rational (Garland, 1990, 7). Accordingly, he stands in stark contrast to Durkheim, who describes punishment as representing a feelings-driven response by the social body to criminal behavior to preserve its collective identity. In this regard, these two theorists represent rational and non-rational views of punishment. Max Weber, however, presents a more mediating view.

While Durkheim emphasizes the influence of structural forces on behavior, Weber's focus centers on "social meanings" that not only are attached by people to their actions, but guide social interaction (Coser, 1971, 217). Such an approach permits Weber to identify goal-oriented rationality as a dominant trend in modern Western society, unlike the more tradition and value-oriented foci in earlier societies: "in all facets of social life—political, economic, or law—efficient application of means to ends has become predominant and replaced other springs of social action" (Coser, 1971, 218). In his essay, "Science as a Vocation," Weber portrays science as "organized in special disciplines in the service of self-clarification and knowledge between inter-related facts" and "not the gift of grace of seers and prophets dispensing sacred facts" (in Gerth and Mills, 1981, 152). This theorist's concern about the disenchanting effects of an excessive focus on the rational is evident (see 155).

It is Weber's concern about rationalization as characterizing modern society and the system of law in modern society that is reminiscent of Foucault's reflection that penal reform falls short of its goal of individualized treatment of the offender. In his essay, "Bureaucracy," Weber views rationalized systems of law as "incapable" of more individualized justice that, in fact, is intended by law-makers: "The modern judge is a vending machine into which pleadings are inserted together with the fees and which then disgorges the judgment together with reason mechanically derived from the Code" (in Gerth and Mills, 1981, 219). While reference here is to European civil law systems, the descriptive reference to the robotic dispensation of legal judgment is uncannily reflective of contemporary determinate systems of sentencing in the contemporary American criminal justice system, wherein judicial discretion has been limited.

However, while Weber emphasizes the rationalized nature of law and punishment, he does not reflect Foucault's more exclusive focus on punishment as a rational means of control. Rather, Weber's interactionist view permits him to represent operations such as punishment not only in terms of their rational use but as not devoid of non-rational or values-centered dimensions. For example, in his development of the idea of "authority" in the context of power, Weber (1947) emphasized that obedience to the rule of law reflects a subject's voluntary act of consent rather than simply adherence to a legal mandate (Bendix, 1962, 290; Weber, 1947, 324). In this sense, offenders in correctional settings are more than mere robotic objects of domination. Furthermore, in the same conceptual development, Weber distinguished human versus religion-based models of human relations. Specifically,

while a human relations view of power is founded on the presence of parties whose interests are either for or against each other, he observed that in a religious-based group (i.e., consisting of “religious leaders, their disciples, and the laity”), emphasis is given to “shared understandings” between the members (Bendix, 1962, 286). Consequently, a religion-based view of power in the context of authority more readily avoids understanding relations between institutions of formal control and the offender as a “dichotomy of opposites” that is apparent in the contemporary America’s criminal justice system.

In his sociology of law, Weber maintains that the authority of the law is to be found in the bureaucratized and rationalized system of law, punishment, and justice, as well as in *shared beliefs* about the legitimacy of rules (Bendix, 1977, 391). “Authority” not only conveys the right of the sovereign to command followers but also “implies the follower’s acceptance . . .” (Bendix, 1977, 482).

Insights of social theory into the meaning of punishment necessitate further development of its connection to the offender in terms of power and order. Sociologically, the violator of criminal law is perceived as one whose behavior needs to be controlled to promote “social order.” Therefore, a system of punishment that is directed more exclusively to criminal acts of individuals may serve to diminish or de-emphasize the offender as an individual! This is especially evident in contemporary retribution-based systems of correctional control, where the significance of the offender is at least minimized by labeling and social exclusion. The experience of imprisonment in contemporary American society presents an example. According to Alford (2000), the confined offender is subjected to an organizational environment that has been characterized as “the rule of nobody” and where “nobody is the same as anybody” (135). Furthermore, Jacobs (1977) has described the operation of modern American prisons as environments to hold the body and where the power of prison guards is meaningful not in terms of their **supervision** of inmates but in their **control** of inmates that in turn creates the “overwhelming experience of men doing nothing” (Alford, 2000, 131—citing Jacobs’ *Stateville*, emphasis added). This depersonalization of the individual offender has been further identified as related to the phenomenon of “mass imprisonment” in America (Garland, 2001). Ominously, the “warehousing of prisoners” is a logical outcome.

This brief journey into the history of social thought has concentrated on three reputed theorists whose writings provide substantive and critical insight into rational and non-rational dimensions of the meaning of law and punishment, and into contradictions inherent

in too exclusive an emphasis on punishment as a means of control to maintain social order. The effects of retribution as a vengeance-driven philosophy are not a failure of the system of American criminal punishment but of the ideology that defines the offender as an object of control. Accordingly, there is a need to establish an approach that permits a broader understanding of what criminal punishment symbolizes, not only in terms of control but in terms of the person whose behavior is criminally offensive.

The Meaning of Punishment and Catholic Social Teaching

This paper attempts to establish the validity of integrating insights from Catholic social teaching as a moral-values approach with insights of social theory as represented by the writings of Durkheim, Weber, and Foucault. The problematic nature of such inclusion, however, must also be acknowledged. For example, attempts to politicize religion and/or religious values in part present a dilemma regarding what, if any role, religion should play in legislative and judicial affairs within American government (Suellentrop, 2006, 49). While the casting of religious labels (e.g., conservative or evangelical) in American pluralistic society may suggest a tolerance for values' differences on one hand, it also suggests, on the other hand, an intolerance to ascribing official signature to any one religious view of values. The non-rational nature of the religion-based view that reflects Catholic social teaching, and of rational, empirical approaches typically employed to understand social and political life are not presented as inconsistent with each other but rather as revealing different dimensions of the life experience. Addressing the meaning of punishment with a religious imagination based on Catholic social principles provides a method with which to critically assess punishment in terms of deeper dimensions of the meaning of person and human relations within the context of power that are not further developed by Durkheim, Weber, or Foucault.

Power Relations, Person, and Punishment

Analysis of biblical perspectives describes the power of Yahweh, of God, in terms of a relationship between Him and His people that is more conciliatory than aversive in nature. For example, the word for "world" or "cosmos" refers to the universe created by God. However, the term also includes "everything on earth that is hostile to God and is the object of God's wrath and condemnation" (Hartman, 1963, 2604). So, it is that hostile part of an otherwise goodly world that must be avoided. In this context, there is evidence that God's judgment is not

defined by vengeance. Exegetical interpretation of Genesis 18:20-33, that describes a dialogue between Yahweh and Abraham regarding the fate of Sodom and Gomorrah, provides insight into Yahweh's salvific relationship with His people. According to Von Rad (1961), this primitive text represents a remarkably revolutionary concern for more individualized judgment by Yahweh wherein the whole city would be saved if only a few righteous people could be found within it. This biblical scholar emphasizes that, in the historical past, Yahweh's judgment would have been understood as collectively-based and, therefore, would have destroyed the righteous along with the wicked. (207-208). In essence, then, the passage from Genesis reflects a certain theological metamorphosis that replaces more collective with more individual thinking: ". . . even a very small number of innocent men is more important in God's sight than a majority of sinners and is sufficient to stem the judgment. So predominant is God's will to save over his will to punish!" (Von Rad, 1961, 209).

Furthermore, a new interpretation of the "righteousness of God" also appears. According to Von Rad (1961), in the Old Testament, righteousness does not reflect one's perfect compliance with an absolute rule (209). Rather, as reflected by the ancient Hebrew word, "siddiq," righteousness refers to loyalty to the expectations and responsibilities that have been pre-determined for a relationship. Here, Yahweh is loyal to His people, but His people also are expected to be loyal to His tenets. As prophetic writings revealed, it is God's fidelity to His covenant with His people that is at the heart of His justice (Hartman, 1963, 1251). And, Hartman (1963) further affirms this exegetical focus by pointing out that vindictiveness by God is never directed to sinners in themselves but to those whose behavior constitutes an obstacle to God's "concrete design, the salvation of the chosen people" (1251). So, there is an emphatic absence of alienation between Yahweh and His people, some of whom may be recalcitrant.

While reference to God's justice is rarely made in the New Testament gospels, it appears only sparingly in the writings of St. Paul, but especially in Romans: 1:17: ". . . the one who is righteous by faith shall live." In the preceding passages, (i.e., Romans 1:14-16), the power of God had been a saving power by which He rights wrongs for Jews and non-Jews alike. According to Best (1967), the phrases and words "righting wrong," "justice," and "righteousness," are derived from the same Greek word, "dikaion" (15). These terms reflect a legal usage of justice from the Old Testament, wherein justice represents the covenant of God with His people, His faithfulness to that covenant, and the expectation that His people will exhibit a mutual fidelity. Such

emphases differ from the more retributive approaches to justice that have characterized practices of punishment in Western society (Miethe and Lu, 2005, 16). From a biblical point of view, there is a belief that people by nature are redeemable.

A religious imagination founded on Catholic social teaching presents a view of justice in which the sovereign is joined with his subject, even in the act of punishment. A unifying characteristic of human nature is that all persons share an inherent, divinely rooted personal worth and dignity that unifies them not only with each other in a moral altruistic relationship, but with the creator (*Pacem in Terris*, 1963, para. 12-13; *Justitia in Mundo*, 1971, para.7; *Evangelium Vitae*, 1995, para.19). As a result, emphasis on a reform-based dimension of punishment is maintained. Pope John Paul II, in his encyclical, *Evangelium Vitae* (1995) and his message for the Jubilee of Prisons in July 2000, and the U.S. Conference of Catholic Bishops (2001), in a pastoral statement on American criminal justice, has reiterated a constant theme: Punishment should provide for the personal reform of the offender and for effective reintegration into society.²

Punishment that devalues the offending person represents a contradiction to Catholic social teaching, since it compromises the communitarian nature of the relationship between sovereign and subject and subjects to each other. According to Garland (2001), the prison reform movement of the nineteenth century, which was directed to reform and individualize treatment of the offender, has evolved to the more contemporary phenomenon of “mass imprisonment” that serves to diminish the offender as an individual (see also Alford, 2000; Jacobs, 1977). Ironically, this trend has further served to justify a system of punishment that nominally acknowledges the individuality of the offender’s rational choices in committing crime while depersonalizing the offender in the experience of punishment itself.³ The offender then is viewed as alienated from sanctioning authorities and a rationale to reinforce an “us-them” dichotomy is established. While a Catholic-based religious imagination, then, emphasizes “solidarity” between punisher and offender as members of the social and moral collective, politicizing punishment promotes the idea of disengagement between the two.

The meaning of “person,” which is essential to understanding what punishment symbolizes, represents more than a focus on the individual. Rather, it encompasses the relationship of self to others. Stabile (2004) contrasts a secular, atomistic, and economic-based view of the person, as “separate and apart from others” and concerned with “the preservation and promotion of the self,” with a “religion-based view” (which includes Catholic social principles) that acknowledges

“the communion and interrelatedness of all beings” and perceives the person in terms of his or her relationship to others (856, 847). In such a perspective, the idea of individuality represents more than the sense of self-containment and being valued on the basis of one’s material achievement or law-abidingness.

As a result, Catholic social principles reject the idea that punishment should be directed to criminal behavior rather than to the person who has committed crime. A retributive model of punishment hypothesizes that control of criminal behavior is essential to social order. At the same time, such a view also implies that the person who offends somehow is alien to the person who is law-abiding, and it denies the communitarian relationship of human persons that includes both offender and those endowed with penal authority by the State. A depersonalized experience of criminal punishment, exemplified in part by the “warehousing” of prisoners, then would become justified. Irwin (2005) develops this further by arguing that punishment, especially imprisonment, is not simply defined by codes of substantive law as an expression of a society’s moral values. Rather, it is governed by “unofficial” purposes that include control of offenders as a “dangerous class” in order to divert attention from underlying social, systemic problem conditions (7-9).

The history of Catholic social thought, however, presents a certain vision that can be readily applied to offenders as persons. The themes of “human dignity” and the “common good” emerge as significant in this regard.

Human dignity is a basic principle underlying the Church’s social teaching. Every human being possesses an inviolable character that is contained in the natural law—creation in the image and likeness of God. Because every person shares an equal dignity as a creature of God, no one by nature is superior to another. All persons have a right to be respected for their dignity and good reputation, and to be free to search for truth. But they also have the obligation to use their natural gifts and acquired skills to take on responsibilities in human society (*Pacem in Terris*, 1963, para. 12-13). Finally, human dignity is not something that is someone’s personal possession. Rather it demands that each person “recognize the rights and dignity of his neighbor” (*Justitia in Mundo*, 1971, para. 34). In the context of a religion-based perspective, dignity is inherent in every person and therefore is **not** to be defined by changing social and political ideologies. It cannot be compromised or diminished or denied depending on the dominant philosophical view of any given historical era (*Evangelium Vitae*, 1995, para. 90, 101). In this regard, then, a Catholic social imagination provides a critique of punishment that deflects its meaning to the offending person.

Belief in human dignity further encompasses the full scope of human behavior. It extends to every person even when that person's actions may violate the rights or dignity or the very life of other persons. And, it necessarily includes the capacity (and, in fact, the obligation) of each person to reform himself or herself (Pacem in Terris, 1963, 8-9). An essential corollary is that the inherent value of a person is not dependent on the nature of his or her behavior.

In summary, an acknowledgement of the dignity of persons according to a Catholic religious imagination necessarily includes criminals and the law-abiding alike. So, by acts of criminal behavior, offenders do not become less human!

The preservation of social order, which in the neo-classical philosophy of crime and punishment emphasizes the protection of the community as a goal of a retributive rationale for sentencing, assumes a broader meaning in the context of Catholic social thought. Specifically, the idea of the Common Good represents more than a diminishment of conflict and deviant behavior as a means to insure the safety of society. Rather, it emphasizes an interdependent relationship between every person with each other and with society: "The betterment of the person and the improvement of society depend on each other" (Gaudium et Spes, 1965, para. 25). It is reflective of the pursuit of justice not more exclusively defined by punishment governed by the nature or types of illegal behavior but founded on a solidarity of all human persons, the moral commitment of each person to everyone else, and the responsibility for self-development (Quadragesimo Anno, 1931, para. 137; Pacem in Terris, 1963, para. 31). Systems and policies of punishment that are more exclusively retributive deemphasize the idea of human redemption and shared identity by all persons.

In terms of a Catholic social imagination, the solidarity envisioned by the Common Good cannot be reduced to insuring conformity to the law, a characteristic function of punishment in the criminal justice system. Rather, every person—sovereign and subject, or those designated by the authority to punish and those who are subject to penal sanction—share a responsibility to acknowledge and respect the inherent dignity that everyone shares with everyone else. The value of a person, then, is compromised when it becomes politicized.

Given the emphasis afforded the retributive view that underlies determinate—and guidelines—sentencing policies in modern America's punishment in criminal cases, and, according to Clear (2007), the questionable effect of high incarceration rates on a sense of public safety, Catholic social teaching constitutes a vital complement to address the significance of the offender and the need for an alternative to a more exclusive retributive rationale.

Conclusions: Trends and a Look to the Future

Criminal punishment viewed in the context of Catholic social principles provides a values-based perspective that encompasses a distinctive understanding of person and its relationship to the idea of power and power relationships. More typical emphasis in criminal justice literature on penal techniques and administration avoids focus on what the reality of punishment symbolizes in criminal cases.

At issue is not simply the presence of retribution as a factor that contributes to current systems of punishment, but rather, its predominance as a rationale for the imposition of criminal sanctions. The primacy of such an approach enables the problem of crime to be addressed as behavior to be controlled, and without limits! (see Bazemore, 2007). A consequence is the depersonalization of the offender, whose individuality becomes absorbed in the classification of the crime committed. This is evident in current controversies in the field that include limited judicial discretion in adjudication in criminal cases, disproportionate sanctions in drug cases, mandatory minimum sentencing, and “Three Strikes” legislation. Furthermore, the effects of a retributive system of punishment are even more far-reaching. According to Tyler (2006), the punitive ideology that has governed American sentencing policy has resulted in a more “negative relationship between the police, courts, and residents of American communities”(2). Nagin (1998) suggests an even more ominous insight: While legal authorities acknowledge the negative consequences, they may tolerate them as necessary outcomes of effectively regulating behavior to maintain social order.

Given the need to address punishment in terms of its meaning and with the inclusion of insights of by Catholic social principles, what approaches and policy decisions in contemporary American criminal justice reflect a change from a more exclusive retributive focus? And what are some implications of these changes?

Two current trends are apparent: One represents an innovative view and approach to doing justice; the other relates to a recent Supreme Court decision that presents a setting for change that extends beyond constitutional limits.

Justice and Punishment: A “Restorative” Dimension

As principal formal means to maintain control and order in society, law and punishment are essentially related to the idea of justice in criminal matters. Justice that is retributive in nature is measured by

the imposition of sanctions that are characterized by severity and proportionality to the offense. It assumes that crime is a public act against governmental laws with the victim playing a less than prominent role. As a result, the offender becomes the target for formal criminal sanctions because of his or her behavior. In effect, this signifies a certain social exorcism and neglects or overlooks consequences of the social stigma attached to having a criminal record.

A program that reflects the idea of justice as “restorative” has developed from earlier historical roots since the 1970s and is now operative in more than three-hundred jurisdictions throughout the United States (Van Wormer, 2001, 33). According to Bazemore (2007), restorative justice represents a model of justice that transcends a view of crime as simply an act in violation of law and emphasizes that criminal behavior is significant “because individual victims, communities, offenders, and their families were harmed” by the criminal act (656; also see Dorne, 2008, 3). This program has further been described as a response to systemic failures to address the effects of crime and justice on those who are affected by criminal behavior incidents. Geske (2005) describes an innovative program at Marquette Law School that involves students in facilitating dialogue and interaction between “stakeholders” or those who are parties to crime events. Such a reparative approach necessarily extends the meaning of justice beyond its being defined by excessive reliance on retribution.

Restorative justice assumes wider implications in regard to all who are party to the criminal act. The offender is no longer considered a passive recipient of punishment, but one who must affirmatively acknowledge and understand the effect of his or her criminal behavior on others and his or her responsibility to the needs of the victim. The victim no longer is a passive participant to whom restitution is due, but one whose physical and emotional needs deserve to be recognized and for which the offender is responsible (Dorne, 2008, 21; also Doolin, 2007, 433). And, the community assumes a responsibility to establish supportive services for the offender and a safe environment for all of its members (Clear and Dammer, 2003, 328). In such a neighborhood locale, residents become each other’s keepers!

The approach and implementation of restorative justice also invites critical comments. A survey of literature in the field reflects more typical focus on the program’s applicability to juvenile offenders or those who are engaged in less serious criminal behavior. But, what about its applicability to chronic offenders or sociopathic individuals? Doolin (2005) offers a meaningful theoretical view to guide the continuing development of restorative justice programs in this regard. The

“process” of interaction between victims, offenders, and the community, is not restorative if it is directed by punishment and not by restoration or repair of the harm done by crime as its “aim” and intended outcome (429). In such a scheme, restoration could be achieved if the offender or victim is a non-participant and even if coercive measures of retribution become necessary to insure restitution to the victim and service to the community. This design also reflects the position of the U.S. Conference of Catholic Bishops in reference to restorative justice, in its position statement regarding the American criminal justice system (2000): “Not all offenders are open to treatment, but all deserve to be challenged and encouraged to turn their lives around.” (13) In essence, every person, offender or not, shares an inherent divinely-rooted dignity that necessitates responsibility for self as well as to others. At the same time, while providing the opportunity for responsible behavior in terms of self and others is demanded, its realization is subject to the limits of the human, social condition.

Restorative justice relates to the communitarian nature of the person. It extends the meaning of justice beyond fairness and imposition of criminal sentences. A procedural system that, through its process and restorative aim, sanctions offenders fairly **and** with respect, also may convey to offenders that the law and its institutions are fair and legitimate, thus encouraging offenders to assume “personal responsibility for following social rules” that necessarily encompass one’s relationship to others (Tyler, 2006, 308; also 316).

Judicial Discretion in Sentencing: A Different Future?

A changing trend in sentencing systems in the United States has been evident since 1975 when social and political prominence that had been afforded rehabilitation-oriented, indeterminate sentencing systems was assumed by more “law and order,” retribution-oriented, determinate sentencing systems. Advocates of change from both academic and political environs supported a reduction of discretion in decision-making that had characterized rehabilitative sentencing, in favor of reliance on “just deserts” that is reflective of retributive justice, offender accountability for criminal behavior, proportionality between the nature of the offense and the sentence imposed, and realization of more effective crime control and safety of the community. According to Tonry (1999), American sentencing policies today reflect a more fragmented than standardized approach. And, while these coexisting views are by no means equally valued and favor the just deserts view, they provide a context in which to explore and reevaluate sentencing policies or systems of sentencing (2-3). This paper argues that inclusion

of the insights of Catholic social teaching provides a perspective to enhance such exploratory efforts.

The Federal Guidelines Sentencing Law, effective November 1987, falls within the more general category of determinate and structured sentencing and was, until recently, mandatory in nature. At the onset, underlying rationales of Congress in this legislation were to diminish the degree of judicial discretion in imposing sentence and insure that offenders would serve the majority of prison terms imposed in criminal cases (U.S. Sentencing Commission, 2006, 2). Structurally, it provides relatively fixed sentences based primarily on classified type and severity of offenses together with the offender's criminal history (Samaha, 2006, 380).

Pursuant to *U.S. v. Booker* (2005), the Federal sentencing guidelines now have been effectively made advisory in nature. The Court sought to prevent violation of Sixth Amendment protection that provides that except in cases where the defendant makes an admission of guilt, a jury verdict of guilty must be based on facts established beyond a reasonable doubt. However, the decision also provided greater discretion for judges in the imposition of sentence.

More specifically, whereas in the pre-guidelines era of indeterminate sentencing the judge was afforded significant discretion within the statutory range, in the pre-Booker guidelines era, judicial discretion was limited, for the most part, to the guideline range itself. Ironically, 18 U.S. Code, Section 3553 (a) already had listed seven factors to be considered by judges in imposing sentence—only one of which refers to the sentence guidelines and another of which to the need to “provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner” (Section (a)(2)(D)). Furthermore, 18 U.S. Code, Section 3582 (a) requires the sentencing judge, in deciding on a prison sentence, to recognize “that imprisonment is not an appropriate means of promoting correction and rehabilitation” (see also Ellis, 2007).

Accordingly, while references to “rehabilitation” were present in Federal law in the pre-Booker guidelines era (1987-2004), the mandatory nature of the Federal sentencing guidelines typically restricted judicial reliance on rehabilitative factors in the imposition of sentences. The current advisory nature of the Federal sentencing guidelines may establish the basis for greater judicial discretion in considering offender-based characteristics listed in 18 U.S. Code, Section 3553 (a), in the future.

In a legal analysis of sentencing in criminal cases, Huigens (2005) argues for a “moral balance” in the process (1048, 1067).

Specifically, he states that “legal judgments about wrong-doing” should match “moral judgments about wrong-doing” in order to reinforce the support of the public for the legal system (1064). And, moral judgments about wrongful behavior must be guided by assumptions about the meaning of person in relation to self and others, of violators and abiders of the law, and the relationship between them.

* * *

Affirming the moral responsibility of all persons for self and others transcends the idea of “control for control’s sake.” Consistent with moral education theory, there is a need to impose punishment **for** the offender rather than **to** the offender (Hampton, 1984, 238). As expressed by John Paul II (2000), punishment must not simply be a deprivation of personal freedom, in compliance with penal law, but must provide an experience wherein “time” becomes an opportunity for self-reform, in terms of remorse, training, and responsibility. This approach avoids the depersonalization seemingly present in the “warehousing” of prisoners (see also, Irwin, 2005).

We must step beyond a politicized view that focuses more emphatically on relationships of control than relationships of mutual responsibility, in order to explore dimensions of the meaning of punishment as bases for change in policy and practice. The principles of Catholic social teaching provide a necessary complement to critical insights of social theory for such a journey.

Notes

1. Durkheim's structural approach as applied to his sociology of law is not without critics. According to Friedman (1977), earlier preliterate societies also exhibited a restitutive character since criminal offenses typically were disposed of by monetary compensation. Lukes et al (1983) critically comment that Durkheim fails to address the theme of power in punishment since he views the development of law and its punishment as expressions of different stages of the collective conscience. Also, they comment that repressive law is also present in civil as well as criminal law (14, 24). Furthermore, Foucault comments that Durkheim's explanation of greater leniency of punishment in its historical and social development does not reflect the possibility that more individual focus on the criminal as an individual may represent a new tactic of power (1977, 22-23).

2. The idea of "religious imagination," as referenced in this paper represents an extension of Mills' "sociological imagination" in which the interplay of "biography and history," or the "life of the individual" and the "history of a society," is necessary to understand social experience (1959, 1-7). In essence, Mills structured a vision that encompasses both aspects in order to reveal the meaning of social life experiences. In this context, the experience of incarceration, for example, as a type of punishment in modern American society, would be analyzed in terms of political and economic factors, and dominant criminological ideology that influence its techniques and administration. A religious imagination, however, would direct itself to deeper dimensions and assumptions about "the nature and meaning of life" (Fuller, 2006, 2). Within the context of criminal punishment, the meaning and significance of the offender as a person and his or her connection to others emerge as vital emphases. The possibility that such a focus will be deemed as less than valid due to its less than empirical character is always present. Weber (1948) voiced a certain skepticism regarding the tendency toward over-rationalization of modern social life by his use of the term, "disenchantment" that reflects a reliance on the use of "technical means" and "calculations" and avoidance of any forces that are not empirically measurable in the arena of modern thought (139). In theological terms, religious imagination seeks to "shape the world into meaning, much as in the beginning, God shaped chaos into cosmos" (Barbeau, 2004, 675). Religious imagination therefore can be understood to refer to those forces that are less empirically measurable but nonetheless represent essential elements of the life experience.

3. From a critical legal perspective, Falvey (2004) tends to dismiss emphases by U.S. Catholic bishops regarding the inconsistency of retribution as a rationale for punishment in terms of Catholic social thought. He makes a substantive argument that strict retribution should not justify punishment in the human life experience, but will be applied at the “final time of retribution,” when divine punishment will be sought for its own sake—the restoration of the universal moral order. As a result, by implication, it is not inconsistent for rehabilitation of offenders to justify punishment in earthly life.

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