

# **A SOCIAL STATEMENT IN PURSUIT OF JUSTICE AND DIGNITY: SOCIETY, THE OFFENDER, AND SYSTEMS OF CORRECTION**

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## **A. THE PRESENT SITUATION**

The growing incidence of lawlessness within North American society is the cause of widespread bafflement, anger, and fear on the part of law-abiding citizens. Unchecked criminal behavior, especially in its more violent forms, hastens the destruction of that minimal trust which makes social living possible, and erodes public confidence in those governmental institutions charged with the task of establishing civil peace and justice.

The civil community looks to its agencies of law enforcement and criminal justice to deter lawless behavior, to prosecute law-breakers, and to facilitate the socialization of offenders. When functioning effectively, these agencies serve to reinforce lawful conduct and contribute to public confidence that security is being maintained.

There is a growing but still too limited public awareness of the counter productivity of present methods of criminal justice. Offenders frequently do not recognize the validity of sanctions which often are applied unequally and the legitimacy of the agencies by which these sanctions are administered.

The problems are manifold. Courts are often overloaded and consequently slow or unduly hasty in administering justice. In the United States the bail system and pre-trial detention result in disproportionate hardship for persons who are poor and/or members of minority groups. Long delays in prosecution of alleged offenders result in both the unjust incarceration of the innocent and the going free of the guilty when witnesses disappear and evidence becomes unavailable. The facilities where persons charged with crimes are "warehoused" are all too often places devoid of human concern and services. Racial and ethnic animosity among the inmates and between inmates and correctional personnel reinforces feelings of total alienation within the offender population.

The popular assumption that confinement is normally the most appropriate penalty for criminal behavior has proven itself fallacious. Jails and prisons have too often become schools of alienation and violence. Those persons who survive them constitute a growing pool of disaffected men and women possessing neither the skills nor the motivation for effective social living. Nevertheless, much of the public looks approvingly upon the segregation of offenders from the communities to which they must eventually return.

The socially-destructive results of "warehousing" offenders are compounded by the fact that a disproportionate number of the persons so confined are young, poor, and members of minority groups. This, in addition to reinforcing alienation and lawlessness in individual inmates, confinement facilities contribute to the widening of dangerous cleavages within the general society.

Two prominent notions underlie the perpetuation of the system of incarcerating offenders. The first of these is the feeling that the community is somehow safer if offenders are removed from it. The public has yet to take with sufficient seriousness the fact that most prisoners will eventually return to the community in many cases with a reservoir of bitterness and hostility. A person is in no sense made more human by being isolated from society.

The other notion is that solitude and deprivation are in some sense "redemptive." While some exceptional men and women may indeed have come into a fuller personhood within the situation of imposed hardship in prison, their self-discovery has not in all cases motivated them to adjust to what they perceive as an

unjust society. In all too many cases prisons have produced persons either utterly passive or utterly enraged.

For society to seek increased security and order by means of a larger and more efficient prison system is for it to sow the seeds of its own destruction.

Similarly counterproductive is the treatment too often accorded first and/or younger offenders. Subjecting such persons indiscriminately to the traditional machinery of criminal justice can amount to schooling them in crime rather than in productive citizenship. Competent diagnostic procedures are all too often inadequate or completely lacking.

Finally, it needs to be clearly said that in North American society it is the poor who bear the brunt of society's ire toward the lawless. Organized and "white collar" crime have the poor as their chief victims. Yet the persons who commit such crimes often escape the hardship borne by the poor offender. It should come as no surprise that many younger of poor or minority persons feel less and less obligation to a social and political system containing such rank structural injustice.

## **B. A THEOLOGICAL PERSPECTIVE**

There are several relevant insights which theology can bring to bear upon the agencies of criminal justice and their reform.

- 1) Distinctions among persons are relative, provisional, and subject to divine judgment. Distinctions between groups within society should be made only for purposes of social utility and well-being. The distinction between the "criminal" and the "law-abiding" elements within a society is one example of such conventional social classification.

The human condition of radical estrangement from God manifests itself in the constant tendency on the part of societies to absolutize these provisional distinctions. Particularly demonic is the inclination of societies to treat those whom it has defined as criminals as altogether alien to the human community and deserving, therefore, of total separation from normal social life.

Thus deprived of their humanity, criminals may become the object of sadism and scapegoating on the part of the general society or may become prey to the "good works" of persons and groups who would use offenders as a means to their own salvation.

The fact that our Lord Jesus Christ was defined by the society of his day as a political/religious criminal, and that countless witnesses to Christ were likewise so defined, should cause Christians to resist the temptation to diabolize persons whom society has declared to be outside the law. Christians will also be reminded that champions of a larger measure of social justice have often been defined as enemies of society. To acknowledge this fact is in no sense to romanticize the criminal; it is rather to recognize that the social system which defines crime is itself capable of criminality. A society may be as much in need of correction as the individuals who deviate from its norms.

- 2) Civil institutions<sup>1</sup> have as their proper function the facilitation of community life, the guaranteeing of the fundamental rights of the community and its individual members, and the creation of a social order that is both secure and humane.

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<sup>1</sup> Institution: a legally established system within a society, together with its own rules and procedures, dedicated to performance of a set of designed functions

It is necessary to maintain a distinction between redemption in the Christian sense and socialization in the civil sense. Thus, theologically speaking, it is not the function of civil institutions to "redeem" persons. Crime and sin are not synonyms. Crime is behavior so defined by civil authority. As such it is relative and subject to redefinition. Criminal penalties should be established to deter lawlessness and to correct the lawless; when they cease to function they must be altered or superseded.

Sin, by the way of contrast, is estrangement from God and is shared by all persons alike. The work of redemption from sin belongs to God alone. Any civil institution which presumes to encroach upon the inmost selfhood of the person for the purpose of "redeeming" him or her has usurped the place of God and become demonic.

The task of civil institutions which relate to criminal justice is to facilitate the socialization of offenders in such a way as to preserve their dignity and the safety of the general community as well. These institutions cannot be seen, or be permitted to see themselves, as agents of "redemption." The idea of punishment as a vehicle of "redemption" must be abandoned; and such strategies as may be found to replace punishment must be abandoned; and such strategies as may be found to replace punishment must be predicated upon a theory of justice and human utility and not upon "redemption."

- 3) Lutheran social ethics has traditionally laid heavy stress upon a) effective social/political institutions dedicated to the maintenance of civil peace and the achievement of justice for the whole society and its individual members; b) conscientious and competent office-bearers to staff these institutions; c) a public climate that is supportive of these institutions and their personnel; and d) the accountability of these institutions before the law of God to the community which they are to serve.

Social institutions, like the persons who construct and operate them, have an inherent tendency to become self-serving. It is for Christians, along with other persons of good will, to be wary of this tendency to take measures to arrest it.

The various institutions of criminal justice stand in need both of the support and the criticism of the general public. Support includes the generation of a climate that is hospitable to appropriation of the necessary resources for positive change. The tendency within the public to make scapegoats of these institutions should be vigorously resisted. The malfunctioning of an institution can be as much the result of public apathy and neglect as of self-serving administrators and anachronistic methods.

The institutions of criminal justice cannot be expected to become the bearers of the cure for their own illness and that of the general social illness as well. Society tends at once to expect too much of the institutions of criminal justice and to allocate too few resources to them for needed improvements.

### **C. POLICY GOALS**

It should be the policy of the United States and Canada, and of the various political jurisdictions within them, to undertake a comprehensive reform of criminal justice procedures and institutions. The reform must be based on the understanding that the primary goal in the treatment of offenders is habilitation, not punishment. The personal dignity and safety of all offenders and persons charged with crime must be preserved, adequate legal representation afforded them, and justice afforded without such delay as to be in itself an injustice.

The strategy of reform should include at least the following elements:

- 1) There should be a comprehensive revision of criminal codes, the selective removal of certain classes of behavior from the category of crime, and the provision of alternative procedures for dealing with such behavior.
- 2) The correctional system should be viewed as a continuous process with the emphasis on treatment in the community and incarceration reserved for control of offenders who are judged dangerous or violent. Whether confined or not, whether processed by a criminal or non-adjudicative system, offenders should remain in touch with their home community where the mutual adjustment of community and offender must eventually take place.
- 3) Youthful and first offenders should be treated separately from the general population. Insofar as is possible they should be afforded alternatives to the traditional process of criminal justice. Financial resources should be made available to facilitate comprehensive, community-based and non-institutional treatment for the youthful and first offender.
- 4) A greater effort must be made to recruit professional, paraprofessional, and volunteer staff reflecting the ethnic, generational, and class composition of the offender population.
- 5) In-service training programs should be available for upgrading staff, and personnel policies should encourage recruitment of paraprofessionals, both paid and volunteer.
- 6) Offenders serving sentences should have maximum opportunity to participate in the governance of their own affairs collectively by means of the democratic process, within the context of the institution and its population.
- 7) Meaningful education, training and work should be available with more than token payment for productive work. State and federal laws, restricting the sale of prison-made products should be modified or replaced.
- 8) Adequate grievance procedures should be available to inmates.
- 9) Local jails should be replaced by facilities competently staffed and suited to the needs of the communities they serve.
- 10) Communities must develop strategies of support and encouragement to offenders and ex-offenders. Laws barring ex-offenders from certain categories of employment should be eliminated. Government, business, labor, and industry should cooperate at the community level so that ex-offenders have equal access with others to available employment.
- 11) More resources, both public and private, must be allocated to the study of the nature and causes of criminal behavior, the evaluating of the effectiveness of correctional programs, and the devising of strategies that contribute both to the prevention of lawlessness and the effective socialization of the offender. It is recognized that it may be necessary to provide some of these public resources through supporting additional taxation; however, these resources could be considered as an investment toward reducing social costs.

#### **D. STRATEGIES FOR THE CHURCH**

The church and its agencies have an inescapable responsibility in the facilitation of genuine reform of criminal justice.

- 1) Congregations of the church have a crucial role to play in creating a climate of community feeling hospitable to the establishment of community-based programs and facilities for offenders and ex-offenders.

- 2) Congregations have the responsibility, together with others within the community, of stimulating public interest and concern about local jails and the persons housed there. While working for alternatives to the jail, congregations and their social ministry committees should seek to provide human support and assistance to the incarcerated and press for optimal professional and correctional services.
- 3) Church-related social agencies should join (and where necessary, form) community teams to establish multi-faceted programs for offenders, ex-offenders, and their families. These programs, which should be publicly-funded, should employ a wide range of professionals and paraprofessionals, including where possible ex-offenders. The church has a key role to play in the recruitment and encouragement of these personnel.
- 4) The church in all its parts should declare itself open to the employment of ex-offenders. Such persons should be encouraged to apply for both nonprofessional and professional positions, including the ordained ministry. The colleges and seminaries of the church should explore the feasibility of establishing educational programs, possibly leading to careers within the church, for offenders serving sentences.
- 5) The local congregation should take the lead in fostering a public "caring about" the agencies of criminal justice. The church should support efforts at reform of the penal code, reform of the courts and establishment of non-adjudicative options for certain classes of offender (especially the youthful and first offender), and the reform and/or replacement of present criminal facilities.
- 6) The church should assist the public to understand the special problems besetting correctional personnel, and provide them with the support they need in working justly and compassionately with those in their care.
- 7) The church should challenge its young people to consider careers in criminal justice as a worthy exercise of Christian vocation, and to see in such careers an opportunity to become system-change agents while serving intense human need.
- 8) Finally, in keeping with the social statement, "Capital Punishment," adopted in 1966, the church should work for abolition of capital punishment or oppose its reinstatement where it has been suspended.

## **E. CONCLUSION**

Crime and criminals are in part reminders of the failure of society to establish justice for all its members. For untold generations societies have sought to remove these reminders of failure from sight and/or to subject them to extreme punishment. It is for the church, together with all people of good will, ever to remind society and government that such a strategy of removal and punishment is neither prudent nor just. Only when the offender is dealt with as a member of the community who must return to it will there be any real hope for a criminal justice system that is both just and effective.