JUSTICE, JUDGMENT AND JAILS

Crime and punishment is one of the most controversial issues in New Zealand today. Not many days pass without our media reporting on a significant crime, or the arrest or trial of a suspected wrongdoer. Issues like how offenders should be treated, whether we do enough to help victims, and whether or not we need to build more prisons, regularly get us talking.

Crime and how it's treated concerns us all. Even if we have not been a victim of an offence, or had any connection with the police, courts or prison system, we all have a direct interest in the subject. We all want to live in a society where we are protected from those who would harm us or our property. Particularly we want to ensure that our children and other vulnerable people in our community can live in safety and free from fear.

What's to discuss?

The argument that the best way to protect us from crime is to lock away all those who commit it is compelling. If everyone who does a crime can be put away for as long as possible, then the rest of us can get on with our lives in peace and safety. That is surely common sense. But is the issue as simple as that?

Clearly there *are* people who are a danger to themselves and to others and from whom society needs to be protected. They need to be locked away and, if released at all, only with the most rigorous safeguards. But is prison the answer in *every* case? Might imprisoning some people – those convicted of minor offences, for example, or those with mental health or drug or alcohol issues – do more harm than good in the long-term?

And what happens when the people we have locked away for many years eventually come out? Will prison have changed them so that they can become useful members of the community and not re-offend? Will the fear of returning to prison alone stop them committing further crime? Is it possible for people to learn their lesson, to change their way of life? Or is criminal behaviour hard-wired into some people?

The situation here

One of the reasons this issue is increasingly talked about here in New Zealand – and why it will be a 'hot' topic at election time – is because we have one of the highest rates of imprisonment in the Western world.

Admittedly we don't incarcerate as many people as the United States, where nearly 750 people per 100,000 are in jail. But when you compare our figure of

200 per 100,000 with, say, Australia (133 per 100,000), or even the country with the highest figure in Europe – England and Wales (154 per 100,000) – it does seem quite alarming. And given that this figure represents a dramatic increase in the last decade or two (our rate of imprisonment rose by 65 per cent between 1995 and 2005); that the Police report that during this time the overall crime rate actually *fell*; and that the Department of Corrections is anticipating that prison numbers will exceed 10,700 by 2016, it's time the issue was given very serious consideration.[1]

Apart from the question of whether imprisonment on such a large scale is making our society safer, its cost to us as taxpayers ought to make us think. The average cost of keeping a person in jail for a year is around $93,000, and perhaps we shouldn't be surprised that the Finance Minister announced in July 2010 that Corrections was set to become the largest government department.[2]

What do we think as Christians?

Christians have much to contribute to debates about crime and punishment. As citizens and residents we have a right to make our opinions heard like everybody else, and we can also bring some challenging and though-provoking insights from our faith to bear on public discussions.

It's surprising how much the Bible has to say about crime and punishment. In both testaments we find stories of people doing wrong and offending against the law, and frequent references to punishment, prison and prisoners. Many well-known biblical characters spent time in jail, and although not all were 'criminals' in the modern sense – some were victims of persecution, or punished for speaking out against social injustice – it's salutary to note that the list includes people such as Joseph, Samson, Jeremiah, Daniel, John the Baptist, Peter, James, John, Paul, Silas and even Jesus himself.

We might argue that what the Bible says about a subject like prisons is not very helpful for us today. The Bible invariably depicts prisons as places of great suffering, oppression, disease and even death, and its assessment of them is invariably negative. We tend to think that we live in more enlightened days, treating our prisoners differently and having different expectations regarding the purpose of incarceration. Nevertheless, it is significant that prisons never receive any 'divine endorsement' in Scripture, and that God's particular interest seems to be in setting prisoners free!

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[1] Salvation Army Social Policy and Parliamentary Unit, *Beyond the Holding Tank* (2006), pp.22, 44; Caritas Aotearoa New Zealand, *A justice that reconciles* (2009) p.7.

[2] Presbyterian Church of Aotearoa New Zealand, *Crime and Justice* (2010), p.8.

The Bible's authors are also not writing as experts in the area of 'criminal policy', and their contexts could not be more different from our own. So we should hardly expect to find in Scripture a 'blueprint' for a criminal justice system which we can lift off the page for our own purposes today. Nevertheless, what the Bible tells us about how God views 'crime', and how the people of God dealt with the wrongdoers among their number, is instructive for us as Christians.

Caring for those in prison

The first thing to say is that the Bible suggests that caring for prisoners, as well as their victims, is one of the hallmarks of a Christian. In the parable of the sheep and the goats in Matthew chapter 25, the 'righteous' who inherit the kingdom are commended with the words, 'I was in prison and you visited me' (verse 36). The original Greek here suggests that these people 'showed practical care for' as well as 'spent time with' those inside. It is interesting that Jesus identifies himself in this passage as a prisoner.

Proclaiming release to the captives was also said by Jesus to be a feature of his mission (Luke 4:18-21). Jesus here echoes the Old Testament message that prisons are not God's first choice when it comes to places he wants people to be found in. Elsewhere in the New Testament we hear the challenge to show concern for people who are locked away: 'Remember those who are in prison, as though you were in prison with them', exhorts the writer to the Hebrews (31:3). This concern should extend to prisoners when they leave captivity and – in the light of Paul's attitude to his jailer in Acts 16:25-34), those who work in prisons too.

Beyond punishment

Somewhat radically, the Bible encourages restitution, redemption, reconciliation and forgiveness as responses to criminal behaviour. In the Old Testament, criminal actions were thought to reflect a deficiency in the whole community, not just the individual concerned, and therefore the community itself was called to repent and return to God. Seeking restitution was thought to be for the good of the victim, the offender and the wider community. There are interesting parallels here with traditional Māori practices which – in contrast to the British system which prevailed here in which a crime was considered to be an offence against the State and therefore punishable by the State – saw crimes as offences against *people*, with reparation thus owed to the affected whānau and community.

In the New Testament, when Jesus confronts a man who has defrauded others to get rich, the outcome is that the man is allowed to put right the things he has done wrong and be received once more into society as a useful member. He pays for his crimes – in fact, four times over! – but in a way that enables him to find

his true humanity and his community to be healed (Luke 19:1-10). On another occasion Jesus tells his followers to avoid going to court, and possibly being sent to prison, by seeking agreement and reconciliation with their accusers beforehand (Matt. 5:25; Luke 12:58). Jesus also encourages some radical rethinking about the purpose of the law and attitudes to punishment in his dealing with the woman taken in adultery (John 8:1-11).

One lesson these Scriptures might have for us today is that real change to people's behaviour comes less through their being punished in a spirit of 'retribution' than by being given the opportunity to reflect upon the consequences of their actions, make restitution, and seek forgiveness from, and reconciliation with, those they have wronged. This reflects the core message of the Christian gospel, that God does not want to punish us for the sins we have committed, but calls us to repentance and offers us forgiveness in Christ. God's love does not give up on anyone, however 'bad' they might seem to be: his grace extends to all. As the prophet Micah (6:8) reminds us, what God requires of us is that we not only 'do justice' but 'love mercy'.

The purpose of punishment

Perhaps that's a good place to start when considering how we might contribute to public thinking about crime. Are we to see prisons as simply places where society 'gets its own back' on those who have offended against it, or places where redemption can take place, where people can experience the opportunity to change?

If we take the first view, that prisons are largely about 'retribution', then we shall not worry too much about what happens there. We simply want prisons to 'do their job' of detaining people who are a threat to society. If, however, we think that punishment is simply part of the bigger goal of trying to ensure that they do not repeat their offending in future – including giving them the opportunity to repent – we shall want to ask deeper questions.

Helping people to change

One question we might ask is, 'what type of people find themselves in prison in New Zealand'? The statistics show that the vast majority are men of Māori or European ethnicity aged between 20 and 35 – but a close look at the figures reveals that nearly 75 percent of inmates have no educational qualification above Year 11 (Form 5), and more than half have a mental illness or personality disorder, or have drug and alcohol addictions. Research undertaken by the Department of Corrections has revealed that the use of drugs or alcohol was a

significant factor in the offending of nearly 75 percent of people sentenced to prison, and 60 percent of people serving community-based sentences.[3]

So one question raised by this is, is prison the best place for people with major depressive disorders, bipolar disorder, psychotic illnesses and other mental illnesses? Is it the best place for people with a dependency on drugs or alcohol? Suppose the money spent on keeping them in prison were used to provide them with appropriate treatment – would that increase the chance of them not committing offences in future? Drug and alcohol rehabilitation programmes do exist in prisons, but they are currently only available to a very small percentage of inmates, and inmates also have to wait for formal treatment once they are released.

Another question to ask is, how much is being done to help prisoners reintegrate into society once they are released? Opportunities in prison to learn new skills which might increase an inmate's potential to be employed upon release have decreased in recent years, and only around a third of all prisoners are given any work, even for a few hours per day. Resources to assist prisoners to reintegrate into the society from which they may have been removed for many years, and avoid returning to the same lifestyle they had before their conviction, are also limited.

On a practical level, there is scope for churches to be more involved in this important task – as examples like the 'Storybook Dads' programme shows. An initiative of the Methodist Mission, this programme allows prisoners to make a DVD of themselves reading books to their children – and they can also add a message at the end, encouraging their children to avoid the mistakes they have made and make better choices for their lives. As well as enabling fathers to stay more in touch with their families, and easing the transition back into their family once they are released, such a programme helps remind them of the fundamental importance of family / whānau. It can also help to develop literacy skills and improve self esteem.

The issue is not whether criminal behaviour can be 'explained' or 'excused' by reference to a criminal's state of mind or lack of the skills necessary to hold down a responsible job; rather it is about how to ensure that a person convicted of an offence is treated in a way that decreases the likelihood that they will offend again. As Prime Minister John Key has said, for some people turning to crime is often a result of their 'being poorly equipped to live law-abiding lives'. What can be done to better equip such people?

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[3] *Beyond the Holding Tank*, pp.23-4; *Crime and Justice*, p.15.

Alternatives to prison?

Another question to ask is, are there more effective methods of punishing people than putting them away in prison? In countries with lower prison rates than New Zealand a greater use is often made of alternative methods of punishment – for example fines, conditional or deferred sentences, and community service. It is often argued that prison is particularly inappropriate in the case of young people who have committed a relatively minor offence, since as well as potentially damaging them psychologically it can expose them to unhelpful influences they might otherwise not encounter.

This brings us back to the question of the purpose of imprisonment. Is it simply to punish a person for their crimes, to seek retribution for their offences? Or should it seek also to enable the offender to break out of their destructive cycle of behaviour, to rediscover their true humanity?

Support for victims

The Gospel story is essentially about reconciliation – the individual accepting responsibility for their action, confessing their wrongdoing, and being restored to a right relationship with their Creator. The story of the Prodigal Son told by Jesus (Luke 15:11-32) encapsulates this perfectly: the young man who left home and squandered his inheritance could have been punished severely by his father upon his return, but instead, amazingly, his father, before even waiting to see if his wayward son is penitent or remorseful, welcomes him back with open arms.

This action by the father clearly benefited both him and his son – and, indeed, the wider community, which was invited to join the 'welcome home' party. In the father's case, his actions enabled him to set aside any feelings of bitterness, hurt and injustice: should not processes today which enable victims to bring a degree of 'closure' to their often deeply painful situation be encouraged?[4]

Victim Support is one voluntary organization which works with the Police to do this, often assisting victims of crime and their families for a year or more if a court case is involved. More than 1,000 volunteers give their time and use their life experience, training and skills to support victims in their community through this organization. This is immensely valuable work, and we might ask why it is so dependent upon the goodwill of people who give their time voluntarily. Victim Support has highlighted the importance of victims receiving effective emotional and practical resources to help them restore their lives and achieve some sense of successful healing or peace of mind – or at least a sense of control over re-establishing a shattered life or some progress out of trauma, shock or grief.

[4] Indeed, in the parable it is the elder brother, who perceiving himself as a victim holds onto anger and bitterness towards both his brother and his father, who is cast in negative light.

A number of victims have found that actually meeting the person who perpetrated the crime against them can help them in this process. Taking part in a 'restorative justice' conference can be one of the most difficult things for anyone to do, and will only be undertaken following much planning and preparation over a period of time and in the presence of trained facilitators. Yet, as numerous accounts suggest, such encounters can have astonishing results which benefit both the victim and the offender. They can challenge deeply-rooted patterns of thought, prejudices and pre-conceived ideas, and enable participants to move forward in a radically new direction.

A change of heart?

In the case of the offender, engaging in a 'restorative justice' event can be a major factor in changing their attitude and helping to prevent them re-offending. Often an offender gives no thought to the impact their crime has had, and has no opportunity to see the pain they have caused to the victim or the real consequences of their action. Hearing the person they have wronged or harmed talk about the effect their action had on them and how it made them feel, confronting head-on the full effects of their action, has changed many offenders' attitudes and led to their reforming their behaviour. Even realising that they have harmed a fellow human being – which our court system often obscures – can have a dramatic effect on an offender. Experiencing forgiveness from the person offended against – if that person feels themselves able to reach that point – can be an extremely powerful experience, and a means of breaking the cycle of anger, violence and revenge for both parties.

Literally thousands of studies have been done showing that punishment is ineffective in changing human behaviour, and that imprisoning more people has minimal effect on the crime rate. Few offenders take into consideration the possible consequences of their actions, and often those actions are the result of complex factors associated with their state of mind and dependency upon drugs and alcohol. Studies have also shown that so-called 'boot camps' and 'scared-straight'-type programmes for young people do not reduce rates of recidivism. Young people can be subjected to periods of high discipline, or taken to an adult prison to see how bad life there can be, but unless the deeper causes behind their offending are addressed, change seldom happens.

Is it possible, then, that greater investment in 'restorative' systems would do more in terms of helping both offenders and victims to put their lives back together again? Or that focusing more on what contributes to young people getting into criminal behaviour in the first place, including the quality of family life they experience and why they become alienated and disengaged from education, will prevent more young people beginning a cycle of behaviour which will see them spend the rest of their life in and out of prison?

When we learn that two thirds of the 9000 prisoners currently released every year in New Zealand will be re-convicted and re-imprisoned within four years, we clearly have to ask politicians whether the current policy of locking up so many people, and doing so little for them while they are there and when they are released, is all that we require of our criminal justice system.

Is change possible?

Changing the way that we, as a society, look at dealing with crime and those who commit it, will require a massive shift in our thinking. Our natural inclination is to want revenge, to see people suffer for their crimes – and we also feel that locking criminals away for as long as possible ensures our greater safety. Yet it is clear that, all the while offenders are released back into the community without having benefited from training or rehabilitation programmes aimed at reducing their potential to re-offend, and the deeper factors which lead people to commit criminal offences in the first place are not addressed, we are not any safer as a society.

In terms of whether our politicians want to seek a different way forward, they are in a difficult situation. Many do recognize that the present system is not adequately serving victims, offenders or our wider society, but they perceive that the majority of voters do not want anything different from what exists at present – and in fact, may want even harsher and more punitive measures. The law and order referendum held in 1999 showed that nine out of every ten people in New Zealand who voted wanted hard labour, longer prison sentences and mandatory minimum sentences, and the direction of legislation since, under both Labour and National governments, has reflected this (for example the Bail Act 2000, the Parole Act 2002, the Sentencing Act 2002, and the 2010 Sentencing and Parole Reform (Three Strikes) Act).

Whether we, the voters, understand the true situation or the complexity of the issues involved is an interesting question. Our media – which of course want to attract more listeners and viewers and sell more papers – have a tendency to report crimes in a sensational and 'entertaining' manner, and in some cases will adopt a very moralistic stance towards alleged offenders and almost pre-judge cases before they are even heard. As Christians we should be concerned about that, and seek always to encourage truthful reporting and observance of the rule of law.

It is also noticeable how little time or space in the media is devoted to serious and reflective analysis of issues related to crime and punishment, in comparison with reports of crime stories themselves. In countries where rates of

imprisonment have fallen, more responsible reporting of crime by the media has been an important factor.

So one constructive way forward could be to encourage politicians of all parties to work towards a multi-party accord on crime and justice, in tandem with a programme aimed at promoting a higher level of knowledge and awareness of the issues among voters. This would allow politicians to shape future policy more upon the basis of evidence and research against the background of (at least potentially) a higher level of understanding on the part of the public. It might also lead to better level of public debate about these issues, one which takes into account the true picture and doesn't get reduced to sloganizing or accusations about being 'soft on crime' or 'putting victims before offenders'. We badly need a debate which treats this issue with the seriousness it deserves.

Moral courage

One can imagine the response if Jesus were to stand in a public place in New Zealand and proclaim 'release to the captives', or tell a person about to be punished for a crime – having challenged her accusers to examine their own hearts first – 'neither do I condemn you, go your way and do not sin again'! His teaching in these matters was far from conventional. Perhaps the moral today is that, as Christians, we are called to voice opinions that challenge 'conventional wisdom', to encourage those around us to have the moral courage to take difficult decisions – not for their own sake, but because the outcomes could be so positive.

It is not easy to argue that our justice system should move beyond seeking 'retribution'. Suggesting that we focus more on how we can maximise people's potential to rediscover their humanity, turn their lives around, and live in ways which reflect their status as people made in the image of God, may not be widely popular. Yet the evidence suggests that such a change in focus can result in far more satisfactory and lasting results for victims, offenders and communities than we are seeing at present. And as Christians, should we not want to see our society reflect, in its policies, that 'grace' which is at the heart of the Gospel?