

THE CRIME OF PUNISHMENT

John 8:2-11

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June 25, 2006

It's been almost 40 years since the well-known psychiatrist, Karl Menninger, came out with his book, *THE CRIME OF PUNISHMENT*. I confess I have not read the whole book--only excerpts and reviews--but it's a title that has stuck in my mind for a long time. Punishment a crime!? Isn't punishment an important part of life? Isn't it necessary for justice? Doesn't everyone, at some time, deserve to be punished?

In virtually every religion there is this overarching view of things that holds that ultimately each of us will be rewarded, or punished, depending on how well we acquit ourselves in this life. Or, if you are a strict Augustinian or Lutheran or Calvinist, depending on whether or not you are included in God's dispensation of grace. In other words, in most religions punishment is part of the ultimate scheme of things. In fact, I think a pretty strong case could be made that one reason why fewer people go to church these days, and why so many people seem to cut corners when nobody is looking, and why there just doesn't seem to be the same sense of civic responsibility and personal morality and public duty and willingness to sacrifice, if necessary, for the greater good, is because most people no longer believe it matters all that much. And they no longer believe it matters all that much because they no longer believe in hell, or some place of final reckoning and punishment. Actually, there are still lots of people who say they believe in hell, but strangely, hardly anybody thinks they're going there. Hell is for somebody else.

Which is precisely one of the things that seems to me most problematic about this idea of punishment. It is something other people deserve. And it is something we'd really like to see happen to certain other people. In fact, there are even times when we'd like to be the ones who get to do the punishing of those we think deserve it. So my first point about punishment is this: If you're going to believe in it, then you'd better believe that you are a prime candidate for it. If you don't believe that, then you're not playing fair. Why should punishment be something just for the other guy--or for that woman who was brought to Jesus because she was caught in the act of adultery?

The story of the woman caught in adultery is a favorite of mine, and the best story in the whole Gospel of John, to my way of thinking. It is something of an anomaly. There is nothing in the Gospel more characteristic of the teaching of Jesus. And yet this story is probably not original to the Gospel at all. It's a wonder it got in there, since the Gospel as a whole is a very theological writing, not at all a historical narrative or report of the words and actions of Jesus. But this one story has about it an aura of authenticity as a possibly historical account. I can believe that this might have actually happened, because it is so much like the Jesus presented to us in the other Gospel accounts.

The gist of the story is pretty clear. Here's a woman who has been found to be guilty of what in those days was a capital crime. I mean, what she had done was judged to be worthy of death.

How she was caught, we don't know. But that she was guilty is not in dispute. The religious leaders who bring her to Jesus profess to be concerned about what the law of Moses requires. We should not assume that they are indifferent to this law, or that they really have no interest in punishing the woman. But their larger intent is clearly to discredit Jesus. If Jesus sides with them, then it's not only the woman who loses, but Jesus himself will lose. He will lose his own integrity, and he will lose standing and credibility among those who find themselves on the margins of society. But if Jesus disagrees with them, then he will put himself at odds with the law of Moses. He'll be seen as irresponsible, indeed, as a lawbreaker, against whom formal charges can be brought.

So what do you do when you're between a rock and a hard place? You change the question. You re-frame the situation in order to get at a more fundamental issue—in order to get at the real truth of the situation: “Let anyone among you who is without sin be the first to throw a stone at her,” says Jesus. And don't you know, after a bit her accusers all went away, one by one. Remarkably, they were at least honest enough with themselves to recognize that none of them was without sin. How did that happen? So often it seems, people who are eager to punish work themselves up into such a frenzy of self-righteousness indignation that there's no stopping them. They cannot be reasoned with. They cannot be brought to a recognition of their own mistakes and failings and transgressions. The act of punishment is typically an act of denial, a displacement of blame and anger and hatred away from self, away from anyone whom we can recognize to be friend and fellow human being, to someone who has no value, no merit, no standing to deserve our compassion. The person being punished may be guilty, but the act of punishment serves to put on that person the sins of us all.

In our story, however, there are two moments that create some space for re-thinking the situation. In each of these moments, both before and after Jesus speaks, he bends down and writes something on the ground. Who knows what it was! Speculation has it that he wrote some words that might have given those religious leaders pause. Words like pride, envy, anger, hatred, jealousy, lust, greed, contempt, infidelity--words that might have pricked the consciences and pained the hearts of those who brought the woman to him. Let anyone who is free of such afflictions cast the first stone!

It's a great story because it cuts through the pretense of self-righteousness, it cuts through legalism, it cuts through hypocrisy. No one is left to condemn the woman, except Jesus, and he declines as well. He charges her not to sin again, and sends her on her way.

One problem with punishment, I maintain, is that it's something we tend to think others deserve much more than ourselves. Punishment is a way of distributing the blame in our society so that it is displaced from ourselves to others. By disproportionately punishing others, the rest of us can maintain the illusion that we are relatively free of blame for the ills and afflictions that beset us all. So the first thing to note about punishment is that it does not get distributed fairly and justly, as even a cursory view of our criminal justice system would confirm. You look at who is in jail, you look at who is in prison, you look at who really has to pay for their crimes, and you see that it is anything but a cross-section of our society. Are the poor really that much more criminal than

the middle and upper classes? Are racial minorities really that much worse in their behaviors? Are men inherently more terrible than women? Of course, we have other ways of punishing women besides putting them behind bars. The fact is that the criminal justice system works the way it does because society needs scapegoats, it needs people to blame, it needs people to punish, so that the rest of us can go about our business as if everything is hunky-dory. The first crime of punishment is that it's not distributed fairly. In fact, all too often it is those who have been most victimized by society--such as those who have grown up amidst the poorest and the harshest conditions within society--who are most blamed for our social ills.

But there is another dimension to this question of punishment that needs to be more fully explored. The problem is not simply that we distribute punishment in ways that are unfair and hypocritical and unjust. The problem is, more fundamentally, that we think punishment is necessary at all. I want to argue, as Karl Menninger did, that punishment is not a good idea. It is not a good thing. It is a crime, not simply in that it is distributed unjustly, but in its very application. Punishment is an intellectually and morally and spiritually defective response to actions and behaviors that the members of a society find objectionable and wish to oppose.

What is wrong with punishment? Am I suggesting that we do not need to hold people accountable for their wrong-doing? No; as Menninger saw it, and I think he was right about this, the idea of punishment contains within it the spirit of vengeance. Vengeance is a way of getting back at people--for what they have done, or what they have failed to do. If we are morally serious, and not indifferent to the harms that some may inflict on others by their errors and omissions, then surely we must hold them accountable. The catch is, there's a crucial difference between holding people accountable, and subjecting them to punishment.

This crucial difference may be captured in the distinction between penalty and punishment. A penalty is a kind of price to be paid. It may be a form of compensation or restitution. It is a way of trying to make good on some wrong that has been committed. Menninger believed that proper penalties for wrong-doing are in order. People bear moral responsibility for their actions. In his later years he wrote a book titled, *Whatever Became of Sin?* It was a protest against the widespread tendency in some quarters to overlook the moral dimensions of human actions, to chalk all misdeeds up to bad upbringing, social disadvantage, or various other psychological and social conditions. So his answer was not to excuse people for wrong-doing, but also not to abuse them, not to retaliate, but to respond with a more rational and psychologically informed approach. As he wrote in *The Crime of Punishment*,

Before we can diminish our sufferings from the ill-controlled aggressive assaults of fellow citizens, we must renounce the philosophy of punishment, the obsolete, vengeful penal attitude. In its place we would seek a comprehensive, constructive social attitude--therapeutic in some instances, restraining in some instances, but preventive in its total social impact. . .

[S]o long as the spirit of vengeance has the slightest vestige of respectability, so long as it pervades the public mind and infuses its evil upon the statute books of the law, we will make no headway toward the control of crime. We cannot assess the most appropriate and effective penalties so long as we seek to inflict retaliatory pain. [“The Spirit of

Vengeance,” @ <http://www.nospank.net/mngr.htm>]

As I see it, punishment in itself, as a form of human behavior, is deficient in two respects. It is deficient, first of all, because it feeds on the spirit of vengeance. It is not a healthy expression of human moral concern. Rather, it gives license to some of our baser human passions. It is vindictive. It is bound up too much with our own egos, with our own impulses to assert ourselves over others, with our own needs to elevate ourselves by controlling, diminishing, and denigrating others.

But punishment is also deficient because it fails to provide a constructive intervention in the lives of those being punished. In a nutshell, punishing people tends not to make them better. Indeed, it may have the opposite effect. I am not going to try to marshal all the data to prove this point this morning. But we can consider a few things that help to make the case. In his book, Menninger answered those who fear that a good bit of juvenile delinquency results from the failure to punish. He cited his colleague, Dr. Sydney Smith to the effect, “In a high percentage of court cases, there is evidence that the child has met with punishment that has not only been frequent but in many cases excessive.” [ibid.] For most children who wind up in trouble with the law, the dictum, “Spare the rod and spoil the child” does not apply. On the contrary, the rod has been used too much.

When it comes to adults, the patterns of criminal arrest, prosecution, and incarceration are highly instructive. There is not only the pattern of injustice, in which the poor and racial minorities bear the brunt of punishment in our society. Another pattern is that of high rates of recidivism. Punishing people evidently does not stop their behavior. It seems to make it more likely they will be repeat offenders. And then there is the pattern that criminal activity among adult males peaks in the mid-twenties, and tapers off rather rapidly after age thirty-five. There is obviously something going on with young men in our society, in particular, that punishment regimens do not begin to comprehend. All this is to say nothing of the fact that our prisons and jails are bursting at the seams because, in the last 25 years or so, as a society we have decided that the best way to counter the traffic in drugs is to punish even the low-level dealers and users of illicit substances by locking them up for longer and longer periods of time.

I fear that we are becoming more and more a punishment society. Maybe now that hell is no longer a vivid prospect for most people, we’re finding other ways to be sure that vengeance happens, that the work of punishment gets done. In any event, the current situation is distressing, and the trends are disturbing.

This past year this congregation has been supporting a local community agency that seeks to deal with behaviors we call crimes in ways that are not punitive or vengeful. One-quarter of every Sunday morning’s unpledged offering has been given to the Community Justice and Mediation Center. I have been especially grateful for this gift because I am the President of the Community Justice and Mediation Center. We have a program, called the Victim Offender Reconciliation Program, that seeks non-retributive ways of responding to criminal offenses. It is built around a model of mediation, one in which victims and offenders voluntarily consent to meet together, in

order to address the hurts and needs of the victim, but also to provide the offender some means by which to make things right that involves personal accountability and responsibility rather than simply being subjected to a form of punishment. The outcome of such a mediation may include acts of restitution or community service, as well as apology, on the part of the offender. It is likely to include a greater sense of understanding, of security, and of closure for the victim, who might otherwise be unable to make much sense or find much serenity in the face of what happened to him or her. Victim-offender mediations typically result in higher levels of satisfaction for victims regarding the disposition of their cases; they also typically result in lower rates of recidivism, as offenders gain a greater awareness of the significance of their actions, a deeper appreciation of the harm that they have caused, and a constructive approach to making things better if not setting them right.

Mediation is obviously not a strategy to use with hardened felons, but it works in a wide variety of other circumstances. There is a place for incarceration in our society, to protect us from the violent aggressor. But in most cases incarceration has become primarily a mode of punishment, not a measure for safety. There are so many other and better ways to think about, and to respond to, those actions we consider wrong-doing, or crime--ways that are not imbued with the spirit of vengeance.

In the last few years we have seen the crime of punishment reach much further than our criminal justice system. There are other explanations for the “war on terror,” but much that has transpired in the past 5 years can be understood in terms of the desire for vengeance and punishment of those whom we have been tutored to fear. The punishment, of course, is directed toward “evildoers,” people presumably not at all like us, people who hate freedom, people who have no scruples, people who are in fact hardly worthy of being considered human. They are terrorists, enemy combatants, “the worst of the worst.” And so it is not only permissible but possibly even morally obligatory that we punish them and, if possible, destroy them. We can lock them up, kidnap them and keep them in secret prisons, abuse and torture them, and indefinitely deny them many of the standard and traditional means of legal protection and justice. In political terms, the “war on terror” is chiefly about world domination, political and economic hegemony, subjugation and control. It is the expression, and establishment, of empire. But it has been fueled by various passions, including hatred and fear, and the desire to retaliate, to punish, to enact revenge toward those who are the objects of that hatred and fear.

We punish, in order to redistribute and thereby displace the blame and the responsibility, away from ourselves, onto others. We punish in order to suppress our fears. We punish in order to justify ourselves. We punish in order to exalt ourselves. We punish, as if we were “without sin,” as if we were instruments of divine judgment, as if we were God’s anointed. It is a crime.
AMEN.

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