

# **VERDICT**

---

Essay 36

1988

## **Religion and the Penal System**

Robert D. Brinsmead

In this essay we shall explore the influence of the Christian religion on the development and maintenance of the penal system. This system plays a vital role in the way our modern society functions. It has also become a massively expensive and troublesome problem. It not only affects many thousands of our fellow citizens who are in prisons, but the entire society which supports the penal system. It is not merely an economic burden, but something which affects the social health of the entire community.

There are voices in the community which advocate prison reform. For most of us, prisoners are people who are out of sight and out of mind. We wish to suggest that all who believe in enhancing the quality of life in society should become interested in this matter.

The influence of religion on culture and of culture on religion is a two-way Street. Theologian Paul Tillich's remarks on religion and culture are now frequently saluted by other scholars as brilliantly stated:

**Religion as ultimate concern is the meaning-giving substance of culture, and culture is the totality of forms in which the basic concern of religion expresses itself. In abbreviation: religion is the substance of culture; culture is the form of religion. 1**

### **The Influence of Western Culture on the Christian Religion**

In previous issues of VERDICT we have discussed at length the influence of Western culture on the Christian religion. Hence we will try to succinctly state this matter here. Christianity found its home in Western culture. The developing theology,

institutions and ethics of Christianity reveal the deep influence of Greco-Roman philosophy, Greco-Roman law and Greco-Roman life. The alliance between this religion and culture is so close that Rosemary Ruether could say:

Having begun as a Semitic faith in an Aramaic-speaking world, Christianity expanded to the East into the Iranian world toward India, as well as to the West into the Greek-and Latin-speaking worlds. But those forms of Christianity that were not within the Greco-Roman Empire and its culture failed to flourish.... Nowhere has Christianity become the predominant form of religion among peoples who are not heirs of Greco-Roman culture. Thus Christian universalism, in practice, has remained mostly limited to areas shaped culturally by Greco-Roman and European civilization. 2

It is not clear that Christianity actually can be disincarnated from its Greco-Roman flesh and incarnated into a different cultural body. Is there really such a thing as a timeless essence of Christianity that can be separated from its classic theological expressions as a synthesis of Jewish religion and Greco-Roman philosophical culture? 3

The church developed a system of theology which bore the unmistakable marks of Latin law. Classical Christian theology was law-based and law-structured. The most influential builders of this theological temple were either lawyers or men deeply steeped in the study and traditions of Roman law. Tertullian, regarded as the father of Latin Christianity, was a lawyer. Ambrose and Augustine were also steeped in Latin law. Anselm's theory of the atonement reflected the insights of Latin law and of contemporary European feudalism. Calvin, who perfected the orthodox Protestant penal theory of the atonement, was a French lawyer. While Anselm's theory reflected the social laws of his culture, Calvin's theology of the death of Christ reflected the practice of criminal law. 4

## **The Influence of the Christian Religion on Western Culture**

As we have said, the influence of culture on religion and of religion on culture is a two-way street. Religion plays a vital role in a society as the *legitimizer* of its culture and institutions.

**The political order needs authority— legitimated power— as well as raw force. Religion seeks to provide the ultimate legitimation for the social order. 5**

At times religion may serve as a legitimizer of social change and revolution. This, however, is rather exceptional and generally only takes place where there is charismatic rather than institutional leadership. Organized, institutional religion is generally the legitimizer of the *status quo*. Thus religion is generally a conservative force in society which allies itself with the forces of reaction to resist social change.

Throughout its history the Christian religion has had a major role in legitimizing anti-Semitism, monarchal rather than democratic rule, and the persecution of minority religions or cultures while supporting the institution of slavery, racism, oppression and

exploitation of nonwhite nations, “just wars,” the subordination of women, the arms race and many other abuses. 6

In the last two hundred years the church’s influence in society has waned due to the separation of church and state and the rapid progress of secularism. Yet a kind of popular civil religion still pervades and powerfully influences the entire society.7 Religion cannot be separated from politics since everyone brings his basic religious assumptions to the political processes and decision-making. As William R. Jones says:

**Matters that appear to be solely political or economic in nature and thereby assumed to deal purely with practical matters are in fact linked to deeper religious, moral and philosophical affirmations of faith that are informed by very specific understandings about the nature and destiny of the human species. It is this unconscious world view, this hidden and usually unconfessed metaphysics that structures our consciousness about life and colors, in turn, our policy values and decisions. 8**

There is no question but that the holy of holies of the Christian religion is certain beliefs about the death of Christ. The cross has become the universal symbol of the Christian religion. Jesus, of course, died under Jewish law for blasphemy and under Roman law for sedition. But Christianity says there was more to this event than meets the eye. God himself was somehow vitally involved in the execution. It had something vital to do with the sins of the world.

Over the centuries the Christian theory of atonement developed out of this connection until it was perfected in John Calvin’s “penal theory.” There has been no substantial further development of the theory since Calvin. Edward Carnell, a well-known apologist for orthodox Christianity, summarized the theory as follows:

**Christ propitiated the judicial sentiment in God, thus making it possible for God to offer pardon to sinners. *This is the essence of the atonement.* 9**

According to the popular religious view, sin must be punished and paid for. There must be *penalty, payment, compensation, satisfaction, atonement*. These are the key theological words. The judicial sentence against sin must be executed. The law must first be satisfied. Justice must be done. The wrath of God against sin must be propitiated or appeased. Only then can God forgive sin.

In this concept Christ paid the blood debt at Calvary. This opens the way for God to forgive us on the ground that Christ has paid for our crimes. Of course, this brief summary states the matter in a way that a Christian theologian might regard as crude. But we are simply expressing the theory as it is understood at the unscholarly, popular level.

We do not intend to here critique this theory of the atonement at length. We have done that elsewhere. 10 But we should emphasize three points:

1. A God who does not forgive until the debt is paid does not really forgive at all. If one went to jail because of an unpaid traffic fine and another went to the courthouse and paid the debt, it would be foolish to talk of getting the debt forgiven. There would be nothing to forgive.

2. The justice displayed in this theory of atonement is the “eye for an eye and a tooth for a tooth” justice legitimized in the Law of Moses. This sanctions a just revenge— but revenge nevertheless. So the theory of atonement declares that God receives his just revenge for sin. He fully pays back. If anyone doubts that this religion of “blood atonement” legitimizes the spirit of nonforgiveness, revenge and violence, he should look at the corollary of this theology of Christ’s death— the popular Christian doctrine of hell. In theology these two events— the death of Christ and hellfire— are simply two stages of the one divine judgment against sin. 11 Hell becomes a prison from which the incarcerated are never rehabilitated and never released. There is no forgiveness! The revenge and divine violence against sin supposedly displayed at the cross is now portrayed on a cosmic scale.

3. God is displayed as one who overcomes the violence of human rebellion with violence.

## **Crime and Punishment**

Most people in our secular society probably give little thought to theories of atonement, although everyone at times reflects on the certainty of death and what might follow. Western culture is still a Christian culture, and the basic myth about the atonement and a future hell still lurk in the subterranean consciousness of our culture.

Society generally feels that crime must be paid for. Even the former prisoner will often say he has “paid his debt to society” “An eye for an eye and a tooth for a tooth” justice is demanded for crime.

Relatives go to court to demand justice for the girl who has been raped or for the young life snuffed out by a drunken driver. The sense of outrage is understandable. What the relatives want, and what society wants, is revenge. “An eye for an eye!” The crime must be *paid* for!

We see this portrayed nightly on television. An offender has been released from prison after serving six months for killing a child as a result of reckless driving. The relatives are outraged. They bitterly complain, “We want justice. How can six months in prison pay for the life of our child?” What they want is revenge— “an eye for an eye justice.

But we need to ask another question: How much time in prison or how much punishment will pay for the wrong that is done? We suggest that such justice is really impossible. The wrong cannot be paid for. Human tragedy cannot be rectified by multiplying tragedy. If one life is maimed or wasted, we do not rectify the disaster by maiming or wasting another life. Our culture is obsessed with a philosophy of crime and punishment which has become the basis of the penal system.

## **Human Responsibility and Punishment**

The popular philosophy of crime and punishment leads to the problem of determining the degree of human responsibility in a given crime. For example, if it is judged that a mother has killed her infant child because of postnatal depression, she is declared “not guilty” and therefore escapes punishment. If in the judgment of the court, however, there was no impairment of mental faculties or the sense of moral responsibility, the offender is then judged to be guilty and is subject to punishment.

The highly publicized Patty Hearst case a few years ago emphasizes the difficult if not impossible task of determining the defendant’s degree of responsibility. Experts for the prosecution analyzed the science of mental processes and testified that Patty Hearst was fully responsible when she participated in the armed robbery. The defense, however, marshaled experts to testify that her sense of responsibility was seriously diminished under the extreme circumstances of capture and brainwashing. This case was never satisfactorily resolved. While Hearst was convicted, society remained uneasy about the entire matter. How could the community be assured that the verdict was sound? Obviously no one could determine Hearst’s degree of responsibility.

How can we determine anyone’s level of responsibility in any given offense? Parental influences, societal injustices, impaired health, unknown mental disorders, confused judgments, emotional instability, hallucinations due to loss of sleep, impaired judgment due to medications, mental stress, profound depression and a thousand unknown factors all may be involved. Judges and juries must inevitably engage in speculation. The entire exercise is as misguided as burning witches. But the point is that punishment is supposed to be related to the degree of responsibility. Again, the general philosophy on punishment is seriously undermined.

## **The Degradation of Punishment**

Modern society rejects physical mutilation, floggings and other forms of corporal punishment. It has recognized that the practice of brutality is dehumanizing and tends to breed brutality.

But is not the penal system also brutal and dehumanizing? The entire environment of the prison is so unnatural, inhuman and brutal that it tends to dehumanize people rather than to rehabilitate them. Soft criminals tend to become hardened criminals. Prisons become vast incubators and schools of crime for the entire community.

It may be argued that the social offender has indulged in dehumanizing behavior. But does the “eye for an eye and a tooth for a tooth” principle of justice (i.e., revenge) accomplish anything worthwhile either for the offender or for the community? Can a society approve of dehumanizing procedures if it believes in the essential dignity and value of human life?

No person and no community can engage in dehumanizing procedures without dehumanizing themselves. This is starkly illustrated by the overwhelming evidence of widespread brutality and sadomasochistic behavior and attitudes among those who guard prisoners. Yet the entire community is influenced by this dehumanizing spirit, even by merely sanctioning it.

There is perhaps a more important reason why this philosophy of crime and punishment is degrading. This reason lies on the spiritual and psychological level of human relationships. When society’s relationship to its maladjusted members is so fundamentally governed by punishment, the human relationship is fundamentally negative. Those who are socially maladjusted tend to become increasingly maladjusted. Punishment denotes a hostile stance of society toward the maladjusted person. This hostility breeds hostility. As a result, the offending member is generally not cured of his original hostility but is confirmed in it. The community makes a fundamental mistake when it responds to hostility by hostility. If the goal of human relationships is to overcome disruption with healing and reconciliation, then the popular philosophy of punishment must be called into question.

## **The Failure of the Prison System**

Evidence continues to mount that the prison system is a miserable failure, a massive evil, a cancer affecting the entire bloodstream of society. In the first place, it does not benefit those in prison. Evidence indicates that most inmates are less fitted to take their place in society after they are released. Prisons multiply crime, dehumanize people and educate them in violence. The inhuman and unnatural conditions of prisons breed perversion on a massive scale and, with all that, a new danger— the spread of AIDS.

In the second place, not only are the victims of the prison degraded, but the entire community is also degraded. The final result is hostility and resentment, further crime, brutality and violence and a greater economic burden. Even from an economic

perspective, the prison system is a disastrous investment.

## Some Preliminary Suggestions about Penal Reform

Many recognize that something should be done to reform the prison system. Thankfully, we now see numerous initiatives in this direction. Changes are being made in various places. These reforms need to be undergirded and motivated by a new philosophy or belief about crime and punishment.

Although some Christians are working for prison reform, the conservative Christian right is often the most vocal advocate of the *status quo*. Behind their fears over the tendency to “get soft on criminals” is not so much a holier-than-thou attitude but a religious belief which sacralizes punishment. After all, the severest punishment imposed by our courts of justice is only a dim reflection of the inexorable law of divine punishment.

1. Society in general and the courts in particular should abandon the belief or philosophy that wrong must be punished or that justice is served by upholding the principle of revenge— “an eye for an eye and a tooth for a tooth.” The community should regard its correctional institutions as ministries of healing and rehabilitation rather than punishment. Reform will not be effective if the old methods and attitudes are merely given a new label, like calling the toilet a restroom. The change must be at the level of belief, philosophy and attitude.

2. The system of justice should not involve itself in the impossible task of determining degree of responsibility for crime so as to assign an appropriate punishment. This is no more reasonable than to require a doctor to determine the degree of responsibility for a dislocated shoulder before he can proceed with the process of treatment.

3. In all its actions the correctional institution must affirm and reinforce the fundamental dignity and value of human life. All its actions should be consistent with its efforts to enhance the quality of life for those in custody as well as for the entire community. No dehumanizing treatment of another human being is ever justified. If our society does not permit the exercise of cruelty to an animal, it should never permit cruelty toward human life.

4. Some human beings obviously must be retained in custody for the protection of the community. The motive, however, should never be punishment. The desired goal must be rehabilitation, and the means of rehabilitation must be help, healing, education, etc. While it may never be safe to release some people to full community life, the goal must always remain to restore them to their full human potential as far as

possible.

5. Those that are not a threat to the safety of the community should not be confined to prison. Society and its institutions should become more imaginative, innovative and creative in dealing with nonviolent crime.

6. Furthermore, efforts should be made to find the means of keeping offenders engaged in productive contributions to the community. Punishing them in an unproductive environment is unrewarding to the community and unhealing for the offender.

## Notes and References

1. Paul Tillich, *The Theology of culture* (New York: Oxford University Press, 1959), p. 42.

2. Rosemary Radford Ruether, "Feminism and Jewish-Christian Dialogue," in *The Myth of Christian Uniqueness: Toward a Pluralistic Theology of Religions*, ed. John Hick and Paul F. Knitter (Maryknoll, NY.: Orbis Books, 1987), p. 138.

3. Ibid., p. 139.

4. See "The Scandal of God's Justice—Part 3," *Verdict*, Essay 8, 1983. For further reading, see the books referenced in that essay.

5. Leo Sandon, "Who Speaks for America? Religious Groups and Public Policy Formation," in *Spirit Matters: The Worldwide Impact of Religion on Contemporary Politics*, ed. Richard L. Rubenstein (New York: Paragon House Publishers, 1987), p. 20. See also Peter L. Berger, *The Sacred Canopy: Elements of a Sociological Theory of Religion* (Garden City, NY.: Doubleday & Co., 1969), pp. 29-51.

6. See "Religion and Violence," *Verdict*, Essay 35, 1988.

7. See David Chidester, *Patterns of Power: Religion and Politics in American Culture* (Englewood Cliffs, N.J.: Prentice Hall, 1988), pp. 81- 109.

8. William R. Jones, "Religion as Legitimator and Liberator: A Worm's Eye View of Religion and Contemporary Politics," in *Spirit Matters*, ed. Rubenstein, p. 240.

9. Edward Carnell, in Rudolph Nelson, *The Making and Unmaking of an Evangelical Mind: The Case of Edward Carnell* (New York: Cambridge University Press, 1987), P. 202.

10. See "The Scandal of God's Justice—Part 3," *Verdict*, Essay 8, 1983; "The Law and the Death of Christ," *Verdict*, Essay 28, 1987.

11. In theology the event is called eschatology, and the two stages are called inaugurated and consummated eschatology.

Each page in this document contains a true word for word unexpurgated transmission of the original essay: "*Religion and the Penal System- R.D.B.*", *Essay 36, 1988*. Permission to photocopy, fax or otherwise electronically transmit in unexpurgated form has been granted. Passages may be quoted within the limits of "fair use."  
Greatest1command.com