For Justice and Mercy

International Reflections on Prison Chaplaincy

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Editors:
Ryan van Eijk, Gerard Loman & Theo W.A. de Wit

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Foreword

Brian Gowans

The Parable of the Rose

A certain man planted a rose and watered it faithfully. Before it blossomed, he examined it. He saw a bud that would soon blossom. He also saw the thorns, and he thought, 'how can any beautiful flower come from a plant burdened with so many sharp thorns?' Saddened by this thought, he neglected to water the rose, and before it was ready to blossom, it died.

So it is with so many people. Within every soul, there is a rose. 'God-like' qualities are planted in us at birth, growing amidst the thorns of our faults. Many of us look at ourselves and we see only the thorns, the defects. We despair, thinking nothing good can possibly come from us. We neglect to water the Spirit within us, and eventually it dies. We never realise our potential.

Some don't see the rose within themselves. It takes someone else to show it to them. One of the greatest gifts a person can possess is to be able to reach past the thorns and find the rose with in others. This is the truest, most innocent, and gracious characteristic of love – to know the other person, including their faults, recognise the nobility in their soul, and yet still help another to realise they can overcome their faults. If we show the rose, they will conquer the thorns. Only then will they blossom, and most likely bloom thirty, sixty, a hundredfold, as it is given to them.

Our duty in this world is to help others, by showing them their roses and not their thorns. It is then we achieve the love we should feel for each other. Only then can we bloom in our own garden.

-Author unknown-

I first became a prison chaplain in 1994 working in a Young Offenders' Institute with over 700 teenagers. Quite a daunting task yet one charged with energy and excitement. A few years later in 1998, I was appointed to the post of Roman Catholic Chaplaincy Adviser to the Scottish Prison Service and it was then that I first became aware of the International Commission of Catholic Prison Pastoral Care and the great yet humble work the Catholic Church carries out in the field of prison ministry.

The first person whose memory I would like to raise has to be that of the late Pope Paul VI, who in 1949, as a Substitute in the Secretariat of State, had the vision to help those thousands of displaced prisoners as the result of the Second World War, by providing the support and pastoral care they needed. Twelve chaplains, 10 from Europe plus the USA and Argentina were invited to Rome to discuss the dilemma of how to care for

so many different foreign nationals locked up so far away from home and family. From these humble beginnings the seed was planted and now over 100 countries are members of ICCPPC.

During my involvement with ICCPPC in a variety of roles from national delegate, vice-president and now currently president, I have met countless numbers of good men and women who walk that extra mile to be alongside those who are displaced and marginalised in the world's many prisons. What strikes me most is the selfless giving of time, energy, devotion and above all love. More than this there is an overwhelming feeling of hope and joy emotions not normally associated with prisons but there is a profound reason why this should be so. Fed and nourished as we are by the Word of God and the Sacraments of the Church and encouraged greatly by the social teaching of the Church we can see clearly the 'rose' beyond the thorns; furthermore we can name it – for this rose is the mystical and broken body of Christ. As chaplains we see the face of Christ in every prisoner for as He himself says-'when I was in prison you came to see Me.'

As well as the many chaplains I have met on my journey, I have been impressed by the professionalism and care offered by hard working staff who clearly want to make a difference in their society –unlocking potential and transforming lives. The ICCPPC has been engaged with the United Nations since becoming a NGO in the year 2000. Working with Holy See and other NGOs we have been heavily involved in the Standard Minimum Rules for the treatment of prisoners; now known as 'the Mandela Rules'. More recently we have been participating in the debate on 'Radicalisation and violent extremism in prisons' with the Council of Europe and the Catholic Bishops Conferences of Europe, giving support and experience in the midst of such trials.

In the ICCPPC publication 'A Guide for Chaplains Confronted with Torture' we can see the many difficulties and dangers faced by chaplains in their routine duties and the skills and diplomacy they have to apply. Equally in the publication of 'Basic Principles: religion and Belief we see how chaplains reach out to all prisoners of belief and none. So many people making a difference.

But the teaching and training has been around for a long time; the goodwill of the many has always existed so what was it that made Monsignor Montini appeal to those initial 12 chaplains. The number is not lost on me! As I began with the analogy of the garden, perhaps it was as looked out on the beautiful gardens of the Vatican that he sought his inspiration, that he heard the cry of the poor in prison and responded with a generous heart.

For the group of men and women that I would like to focus on are the prisoners themselves. In our world today there are over 10 million people in prison in various stages of their sentence and in a variety of conditions ranging from the incredibly poor, overcrowded and not fit for purpose to

the relatively comfortable with a variety of opportunities to live and work. To this number may be added the sorrow and anxiety of their families-children whose parents are in prisons, parents who no longer have the joy of seeing their sons and daughters grow up in the family home, grandparents who can longer hug their grandchildren and so much more. A variety of skills and talents locked away.

Then too, there are those who are addicted to some substance, whose poverty and surroundings have made crime seem the only option; and a huge array of illness especially mental illness which is all too often misunderstood. So many ill and desperate people are often punished by imprisonment sometimes not even realising why they are there.

But let us not forget the victims of crime too for the pain and suffering they endure is great and long lasting. They also need the support and pastoral care of a loving church. Good chaplains not only befriend prisoners but challenge them especially by the example of our own lives well lived. The world of prisons is a deep and complex one full of 'Good Friday' experiences but as we know the story doesn't end there.

Chaplains from all around the world have worked together to unlock that great potential that lies within each of us offering that same hope and joy that follows every 'Resurrection'. We are an Easter People recognising the face of Christ in every prisoner, in their families, in every member of staff and in every victim. Some of those stories are told by the talented and experienced authors of this book. In every chapter this is a journey of life, from the planting of the seed to the blossoming of the flower. As I write this I am celebrating the 31st anniversary of my ordination to the Sacred Priesthood, 22 of which have been spent among prisoners as we have journeyed together, precious memories of the distance travelled and time well spent.

I welcome this book as I appreciate how many lives have been touched by the pastoral care of those who are engaged in prison ministry. I salute and congratulate all my colleagues and friends who have made the ICCPPC what it is today as we celebrate over 65 years of our Commission. I look forward to our successors as they continue this wonderful apostolate and hope they receive as many graces as have blessed my ministry.

Lastly, encouraged by the writings and teachings of our current Holy Father, Pope Francis, who in this year of Mercy has invited prisoners to join him in Rome and whose shining example has brought new life and hope to all in prison, reminding us that we are all sinners in need of God's mercy while at the same time showing how great that mercy is for those who seek it.

I thoroughly recommend this book and hope you will all enjoy reading it –allow it to plant a seed in your own heart and nourished by God's mercy watch it grow.

'To know someone here or there with whom you can feel there is an understanding
In spite of distance or thoughts unexpressed- that can make of this earth a garden."

-Goethe-

Fr. Brian Gowans
President of ICCPPC

Edinburgh, 13th July 2016

Introduction

Ryan van Eijk, Gerard Loman & Theo de Wit

Most publications regarding prison chaplaincy are monographies by theologians or prison chaplains, or books from inmates witnessing their personal conversion. Publications on an international level and addressing prison chaplaincy from different (continental and disciplinary) angles are rare. In the series of the Centre for Prison Pastoral Studies (Centrum voor Justitiepastoraat (CJP), the oecumenical study centre for Prison Chaplaincy from the School of Catholic Theology of Tilburg University and the Protestant Theological University (PThU) Amsterdam, most attention is given to the praxis of prison chaplains in the Dutch context. But already in the first publication there was some attention for prison chaplaincy as an institution.[1] That publication contained three parts: context, theology and praxis of the Roman Catholic and the Protestant prison chaplaincy in the Netherlands. However, little attention was given to the international context.[2] *For Justice and Mercy* offers international texts on the positioning of prison chaplaincy and examples from the praxis, as well as from several contexts and concepts. The focus is not exclusively on global perspectives, but the publication is certainly international for its contributors are academics or experienced prison chaplains from all continents who are offering reflections from different scientific disciplines on aspects which are of interest for prison chaplaincy in general.

Most articles are written from the catholic point of view. The reason is that the initiative for this publication was taken by the executive board of the International Commission of Catholic Pastoral Prison Care (ICCPPC), President Fr. Brian Gowans and secretary-general Dr. Ryan van Eijk, to mark the 65th anniversary of the ICCPPC. The ICCPPC has been looking after the interests of the Roman Catholic prison chaplaincy in all countries since 1949. Unfortunately, there is at this moment no comparable protestant or orthodox umbrella organisation of prison chaplaincy at international level which could function as its counterpart. The International Prison Chaplains' Association (IPCA) has the characteristics of an ecumenical union for all Christian prison chaplains (protestant, orthodox and catholic), and looks mainly after the interests of the individual chaplains.

Since the beginning of ICCPPC in 1949 there have been many changes

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1 Cf. F. van Iersel, F., Eerbeek, J. & Bijkerk, R. (Red.). (2009). *Handboek justitiepastoraat. Context, theologie en praktijk van het protestants en rooms-katholiek pastoraat*. Damon: Budel.

2 Except one article: Hummelen, H. & Loman, G., Internationaal perspectief, *ib*., 437-442.

in the relations between states and churches. In various countries organisation and praxis of prison chaplaincy look totally different because of the context. Questions like 'Should prison chaplaincy first of all be embedded in the prison structure or in the church structure?', 'Is there a dominant religion?', 'Is chaplaincy relevant?' Furthermore, the content of prison chaplaincy in a country fully respecting the new Standard Minimum Rules (the Mandela Rules) is completely different from countries where elementary human rights such as enough food and a working criminal justice system are missing. Since 2000 ICCPPC has been recognised as an Non Governmental Organisation (NGO) at the United Nations and the Commission works together with other NGO's in the field of Human Rights and Prison, mainly at the United Nations Office on Drugs and Crime (UNODC) in Vienna. The recognition of the ICCPPC by the Vatican and its strong ties with the Pontifical Council of Justice and Peace gives the ICCPPC the possibility and the obligation to be a major official representative of the Catholic Church in this field, advocating the importance of prison chaplaincy and the social teaching of the Roman Catholic Church in 'the field of Punishment and Prison'.[3]

'*For Justice and Mercy'* has four parts: Positioning, Praxis, Contexts and Concepts.

Part I: Positioning

In the first part we see in seven articles how the authors see the position of the Roman Catholic prison chaplaincy in the past as well as in the future, and we learn how different this can be: in every continent the situation asks for other options.

Bruno van der Maat (Peru) investigates in his paper the role of prison chaplains and their contribution to Justice, Peace and Reconciliation. To that purpose, he starts with a reflection on what we consider Justice to be: is it the mere application of the law, or do we have to reach a bit further? In that respect, the relation between Justice and Law is considered, mainly from a Pauline perspective. Then he analyses the concept of Reconciliation, especially from an African point of view. In the following conclusions that follow, he ends by raising some practical suggestions to help guide the prison pastoral ministry.

Ruth Webber's article (Australia) reports on a study of Catholic Prison Ministry in Victoria, Australia. It details the ways in which the Ministry provides the environment and context in which prisoners can reflect on their lives in a restorative manner. Data was collected from a number of

[3] See *A place of redemption. A Christian Approach to Punishment and Prison,* (2004) Catholic Bishop's Conference of England and Wales.

sources including interviews, written statements, participant observation, documents and other written material. Thirty-six people including chaplains, volunteers, prisoners, ex-prisoners, family members and others associated with Catholic Prison Ministry were either interviewed or provided written statements about the Ministry. Results indicate that the emotional, physical and spiritual support provided by prison chaplains and volunteers provides a context whereby prisoners were able to face up to the harm they have done, re-new contacts with family and be open to spiritual renewal. The Ministry also helps the prison environment to be a calmer place resulting in a reduction in the number of infractions.

The 'inner history' of the ICCPPC is described in 2 articles. The former Secretary General of ICCPPC, **Gerard Loman** (Netherlands), presents in his article an overview of how ICCPPC developed from a post-World War initiative by a cardinal into a worldwide network of catholic prison chaplaincies, who try to support each other and who are continuously looking for ways to improve the pastoral care that prisoners receive, and also the detention circumstances and position of prisoners. The former ICCPPC President, **Christian Kuhn** (Austria) -who worked also for the UN- describes the history and achievements of ICCPPC as an NGO at the UN, mainly at the important seat of the United Nations Organisation on Drugs and Control (UNODC) in Vienna, Austria. The official delegates from all the countries and several NGO's speak here to improve the situation of prisoners.

Asia is a huge continent with Christian minorities in most countries. Fr. **Sebastian Vadakumpadan** (India), at the moment of writing the Asian representative at the Executive Board of ICCPPC, shares the challenges and goals he sees for prison chaplaincy in this continent. He reflects the position of prisoners: are they a nobody or our brothers and sisters? When Christianity is a minority in a country, the situation changes dramatically.

Fr. **Javier Ladrón de Guevara** (Argentina) focuses on a central question: What to do with the man who kills? And what did God do? -'And the Lord put a mark on Cain so that no one would dare to kill him if they would come to him.' (Gen 1:15) The current situation in prisons and of the persons deprived of their liberty shall be maintained in accordance with prevailing conceptions that permeate society. While this is so, Jesus gave His life so that everyone would get it (life) in abundance. To be a legal owner of human rights the only requirement is to be human. When God created the world, he created a world without prisons. Can we dream of a world without prisons?

According to Fr. **Jorge García Cuerva** prison is not Christian, for prison belongs to the old order of this world and is questioning our faith and the essence of our lives. Prisons are an insult in the eyes of God because His condemned sons and daughters, by being there, are wounded in their dignity and God himself is raped in them. Prison chaplains are called to

proclaim the Jesus gospel, mercy, reconciliation and hope among those who Jesus loves with a preferential love and with whom He also identifies.

Part II: Praxis

In the second part four authors reflect on several aspects of prison chaplaincy in daily praxis.

Michelle Becka (Germany) writes about the challenging project in Germany on the introduction of ethical commissions in prisons.

Tobias Brandner (Hong Kong) writes about the importance and meaning of volunteer visitors in prison. He reviews some findings of social science, but mainly reflects on experiences of himself as a practitioner – a chaplain and theological teacher – who has worked with prison volunteers for over 20 years in Switzerland and in Hong Kong. He focuses on the impact of the visiting ministry not only on inmates, but even more on society as a whole.

The article of Mārtiņš **Krūklis** (Latvia) focuses on an exegetical analysis of the piety and devotion before God to reveal these skills as the main personal qualities of a pastoral counsellor. These skills are discovered as the basis for making in unity with God while performing the activities of a pastoral counsellor. The article deals with the importance of the piety before God in the development of respectful relations with peers. The author links the understanding of a new creature in Christ with the ability to build a mutual dedication relationship between pastoral counsellors and persons under their care. Charity is seen as a service to the least of brothers, concluding that in the New Testament everything related to the words poverty and suffering reveals the presence of the Kingdom of God on earth, as well as the fact that any person in our lives can become the least brother of Jesus.

Pieter **de Witte** (Belgium) explores in his article the relationship between Catholic prison chaplaincy and the restorative justice (RJ) movement. The author claims that there is a paradox at the heart of this relationship. On the one hand there is a strong 'ideological link' between RJ and prison chaplaincy, which can be explained by referring to some shared features: an emphasis on the moral nature of crime, complex attitudes towards wrongdoing, and a critical stance towards the existing prison system. On the other hand, there is only little practical cooperation between chaplains and RJ practitioners. The article tries, nevertheless, to bring to light some ways in which pastoral work in prison can be said to be 'restorative', even if a stronger practical collaboration remains desirable.

Part III: Contexts

Prison chaplaincy doesn't exist on itself. The context differs in time and place. Based on the incredibly important work of (human) rights

(research)institutions **Ryan van Eijk** (Netherlands) presents in Global Facts and Trends a very short overview on developments which can be seen in today's world of prison systems.

Alison Liebling and **Ben Crewe** (England) ask 'What makes a good prison governor?' and 'Are personal and professional values relevant to the shape and quality of a prison?' They found, contrary to their expectations, that the differences between governors were not primarily related to which sector they worked in. However, that establishments' strengths and weaknesses often reflected the character and values of their Governors. There are two important dimensions to prison management: the historical-cultural-ideological dimension (what are the currently accepted aims of imprisonment, how are prisoners regarded, and what kind of criminology of offending and response to it are present or articulate at a social and organisational level?) and the individual-professional (where do individual prison governors lie within the available range of ideological positions and governing styles? How killed or competent are they in the translation of their professional vision into practice, via the available organisational means?) They see some clearly identifiable professional styles.

Structural injustices must be acknowledged as background for the emergence of US mass incarceration. In her article **Hille Haker** (USA) discusses the underlying concepts of justice and argues that the human rights framework is required as normative framework for a reform, with recognition theory spelling out the relation of dignity and identity. The Unites States Conference of Catholic Bishops' Statement is a welcome proposal to shift from retributive to restorative justice, but still lacks a thorough social analysis. Christian ethics is revisited in light of recognition theory on the personal, political, and social level. Finally, prison chaplaincy is considered by her as a relational approach aimed at countering experiences of misrecognition with concrete acts of attention to misrecognition and advocacy for justice.

In **Irene Becci**'s contribution (Switzerland) we read how religious diversity has emerged as a question from the 1960 to the beginning of this century for Italian penitentiaries. She is especially interested in the way in which the meaning of religion is constructed in the context of relations of meaning and within institutionalised relations of power. Becci describes how the 'religious other' slowly entered the Italian sphere of legal recognition and then come to the discourses of actors in prison. She states that the freedom the prison chaplain gets from the administration is a 'somehow poisoned gift'.

Part IV: Concepts

Prison chaplaincy needs and uses concepts, words and ideas that are in our mind, faith, and thinking and which at the end define the direction of our acting.

Cardinal Peter Turkson (Vatican) asks of himself and us what is the best order of the three words: justice, peace and reconciliation. Do we have to start with the 'official' justice then comes 'reconciliation' at the end or can it be opposite? Is 'peace' a result or a starting point? How do we choose?

The contribution of **Fred Van Iersel** (Netherlands) explores the intersection of Christian anthropology and Catholic Social Teaching in their approach of crime and its punishment. It is shown that according to Christian anthropology, human dignity is intrinsic to human nature, that and how evil can be dealt with in a fruitful way in the context of Christian anthropology - because of, and not in spite of the moral perfectionism implied in it. The second part of this contribution discusses key elements of Catholic Social Teaching and its approach to Criminal Justice. Here it is shown that the concept of legal justice needs extension towards social justice, and that social justice in combination with the concept of unity of humankind must lead to efforts to prevent crime and to reconciliation.

Ryan van Eijk (Netherlands) shows that in Roman Catholic theology human dignity has been seen since Vatican II as the central concept of Catholic social teaching and that human dignity is indeed core business for the Catholic prison chaplaincy. After a closer look at human dignity as concept and the concept of humiliation as the opposite of human dignity he presents how human dignity is embedded in law and in today's Catholic social teaching. He points at difficulties which prison chaplains face concerning human dignity in detention and ends with presenting some guidelines to help improve human dignity in detention circumstances.

For **Theo de Wit** (Netherlands), of the well-known conceptual pair 'justice' and 'mercy' the second term has always been the more mysterious and intriguing. And this precisely because he can understand and often agrees with the philosophical criticism levelled against mercy from the position of justice. To discover what the true meaning of mercy is he therefore proceeds towards *via negativa*, that is, trying to understand what mercy is by looking at what it certainly is not, or at any rate, should not be. In his contribution, he discusses some 'pitfalls' or 'temptations' to which the exercise of mercy is particularly vulnerable. And in the next step, he attempts to describe the virtue of mercy in a positive sense. There, he starts with a philosophical reading of the well-known seven corporeal and seven spiritual 'works of mercy' in the Catholic tradition. He concludes that several of these works cannot be understood as a way of rendering spiritual or material assistance or charity to the person in question, but as deeds in *honour* of individual human beings. And further, that mercy is the appropriate attitude when we are confronted with the experience of the limits to normal, common interactions and relations based on the customary reciprocal exchanges between morally responsible human beings, in other words: when we are confronted with the limits of ethics

and ethical accountability. So, mercy is not an alternative to the claims of justice, but perhaps the only human answer to the *Endlichkeit* of our moral strivings.

Bart Koet (Netherlands) states in his contribution that history teaches us that a stay behind bars can put one's strength of mind, or spirituality, to the test. He explains how he as an exegete and former prison pastor puts imprisonment and liberation in a biblical perspective. As starting point, he uses the story of Peter, described in Acts 12,1-23. Luke refers so often to the story of Easter that it is likely that to a great number of readers at the time Peter's liberation could be interpreted as an Easter story. It is plausible that among them there definitely were some who immediately took up those references and were able to teach those reminiscences to other people. Thus this story was turned into a model of biblical spirituality. It brings Koet to the conclusion that the main task of each and every prison pastor is, inspired by the numerous memories of Easter, to listen to the detainee's story every time in such a way that together they can fabricate a way out of despair and that for this human being as well the Exodus may be celebrated, even if it is for just a while.

In Latin America the Latin America Episcopal Conference (Consejo Episcopal Latino Americano or CELAM) is an important player. At the continental Conference, almost 10 years ago the closing document gave attention to prisoners and prison chaplaincy: The Aparecida Document.[4] **Jorge Garcia Cuerva** (Argentina) looks at the system of incarceration and the role that Prison Chaplaincy has to play in the southern part of Latin America, with this important document as a guide. He writes in his second contribution about the guidelines of what he sees as the task of prison chaplaincy looking from a Latin-American context. From prison and from the social conflict prison chaplaincy wants to echo a wrenching, deep and liberating cry: reconciliation. Prison chaplaincy proposes a merciful justice that goes beyond traditional justice. It starts from the experience of experiencing the joy of being forgiven. Jesus proclaims and reveals by word and life His love of a reconciling God, who transforms every source of conflict. Prison chaplaincy should recognize conflicts, denounce sin, contribute to humanization, rebuild the fraternity through dialogue, and promote forgiveness.

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[4] See *The Aparecida Document* (Bogota 2007), especially nr. 8.6.5. (www.aecrc.org/documents/Aparecida-Concluding%20Document.pdf).

Appendix

In the appendix we find the revised edition of the United Nations Standard Minimum Rules for Prisoners, the so called Mandela Rules.

Although this publication is an initiative of the ICCPPC the views expressed in the articles do not necessarily present the opinion of the ICCPPC.

Part I:
Positioning

Chapter 1
Prison Chaplains Serving Justice, Peace and Reconciliation

Bruno Van der Maat[1]

The question of Prison Chaplains and Reconciliation is at the very heart of our ministry. This contribution will have three chapters. First of all I will reflect on our concepts of Justice. Then I will present some reflections on Reconciliation, in order to get to my third point, which highlights our role as Prison Chaplains.

1. What is Justice about?

We are all part of a Justice and Prison System, and we probably have our serious doubts about the way it works[2]. We see every day how this system hurts the lives, not only of the inmates, but also of their families, of the prison workers, etc.[3]. However, in our societies this system is normally taken for granted. It is assumed to respond to our security needs. Even if probably most would agree that the system is not perfect, that it actually violates the human dignity of many people, it still is accepted as the best way to deal with crime and transgression. It is assumed to grant justice. But, what kind of justice are we talking about?

1.1 The Rule of the Law

I would like to develop some ideas on the concept of justice that lie behind this way of thinking. We usually relate Justice to Law. The link between both is evident. The law is supposed to be just, so if you break the law

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1 This article is a revised version of the topic presented at the XIIIth ICCPPC Congress in Yaoundé.

2 A recent book proposes to substitute prison sentences by flogging. The author states that this would be a more human and efficient solution to crime prevention. He points at the paradox of the prison system by describing its inhumane nature: "If we really wanted to punish people, we could sentence drug offenders to join gangs and fear for their lives; we could punish child abusers to torture followed by death; we could force straight men to have semiconsensual prison-gay sex… All these things already happen, but we just sweep them under the rug and look the other way." Moskos, P. (2011). *In Defense of Flogging*. Basic Books. See the book review in *The Economist*, Vol. 399, nr. 8739, June 25th 2011, p. 99-100.

3 I have worked on this them in other documents. Cf. Maat, B. van der (2010). *Sources of Injustice in our Prison Ministry and some Ways to cope with them*. Stockholm: VIth IPCA World Conference, 21.08.2010. The text is on the ipcaworldwide.com web site.

you should be punished because you have acted unjustly. That is what is called the "Rule of Law"[4]. The Law is actually a great invention. Aristotle already stated that: "Government by the law is preferable to government by one of the citizens, and even if it is better that some (citizens) govern, they have to be established as guardians and servants of the law".[5] The rule of the law protects all citizens against the arbitrary rule of someone else. As John Locke famously stated: "Wherever law ends, tyranny begins."[6] Paradoxically, the law makes it possible for freedom to exist. As such, the rule of the law is a characteristic of a free country[7]. Without the rule of the law, any citizen actually loses the rights granted by his/her citizenship. He/she would be at the mercy of the strongest, the fittest, i.e. the arbitrary or discretionary. In many countries this still happens and the rule of the law has not yet been satisfactorily implemented. In every society some people feel they can act as they like because they feel they are better than the others, superior to them by their own qualities or by birth, or even by divine election. This falls foul of our democratic convictions. Many dictators have been able to rule as such because they were able to convince their fellow citizens of their supposed superiority. We should always beware of these kind of arguments. Democracy means all are equal. This basic principle should always be respected, and the rule of the law is a condition for that, although not necessarily a guarantee[8]. I quote the late Lord Bingham (former Master of the Rolls and former Lord Justice) "What makes the difference between Good and Bad Government? I would answer, no doubt predictably: the rule of law."[9]

But behold, the rule of the law is not enough. After having defended the principle of the rule of the law, I would like to go a step further and share some reflections on the function of the law.

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4 I highly recommend the book of former Lord Justice Tom Bingham on this subject which was very inspiring to me, coming from a member of the Judicial System. Bingham, T. (2010). *The Rule of the Law.* London: Allen Lane. The Rule of Law has also been highlighted at the recent UNODC Congress (Doha 2015) as a condition for Justice.

5 "Donc le gouvernement de la loi est plus souhaitable que celui d'un des citoyens, et selon le même argument, même s'il est meilleur que certains gouvernent, il faut les établir comme gardiens et serviteurs des lois." Aristote (1990). *Les Politiques***,** III, chap. 16, 1287a, v. 19 sq, p. 267.

6 Locke, J. (1690/1990). *Two Treatises of Government*. London: J.M. Dent & Sons Ltd, Chap. XVIII par. 202, p. 219.

7 Thomas Paine stated that: "in America the law is King. For as in absolute governments the King is law, so in free countries the law ought to be King; and there ought to be no other." Paine, Th. (1776/1995). *Common Sense*. Oxford: Oxford University Press, p. 34, quoted by BINGHAM (2010:8).

8 "Be you never so high, the Law is above you" wrote Thomas Fuller in 1733, quoted by Bingham (2010:4).

9 Bingham (2010:174).

1.2 The Function of the Law

If we can agree that the rule of the law is an important feature of our societies, making us able to live together, we should, at the same time, prevent ourselves from putting our faith in the law as the only and sufficient condition for our conviviality.

There seems to be a myth that proposes the law as the answer to all our problems. Put into theological terms the law would be the guarantee of salvation. I will come back to this idea. May it suffice for the moment to state that there is a kind of over-dependency on the law. This is especially true in our criminal justice system. If our societies are burdened by insecurity, mafias, drug trafficking, criminal gangs etc., the easy answer is to steepen punishment. Harsher and longer prison sentences are what everybody seems to like, and politicians gratefully comply with this desire, no matter if these sentences do not lower criminality but seem to increase it.

In ancient times, all laws could be read on a single stela, as the famous Hammurabi Code at the Louvre shows[10]. Now proportions seem to have changed. No normal citizen could ever be able to know all the laws that reign in his country. Not even judges and lawyers seem able to keep pace with the laws' extending volume. Lord Bingham describes this feature in terms of a "*legislative hyperactivity*" and of "*a torrent of legislation which we have witnessed, particularly in the criminal field in recent years*".[11]

What makes us live under the increasing burden of the law, which legislates everything but does not seems to be very efficient? Security prevails over liberty[12], basic civil rights are restricted, and to what end? We do not necessarily live now in more secure societies than before those laws came into effect.

I think the reason is that we have forgotten what constitutes the basis of our societies. Our family, our community is not built upon a legal foundation, but on the desire to live together. We do not live together because we are under the same law, we live together because we want to, and the law helps us in that perspective. We seem to have put our confidence in the law, while we should go back to our very roots of sociability (Rousseau

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[10] The three parts of the Code of Hammurabi consist of just 28 columns, about 50 pages of printed text. See: Roth, M.T. (1995). *Law collections from Mesopotamia and Asia Minor.* Atlanta: Scholars Press. Nowadays one single law may have more pages than that.

[11] Bingham (2010:40-41), who quotes Sir Menzies who is said to have observed: "The mantra might have been "Education, education, education", but the reality has been "Legislation, legislation, legislation"." Ibid. Jonathan Swift recalls in his Gulliver's travels that among the giants of Brobdingnag a law was not allowed to have more words than the characters of the alphabet, which amounted to only 21 characters. (Chap. VII).

[12] "He who would put security before liberty deserves neither", Benjamin Franklin, quoted in Bingham (2010:136).

would invoke the "social contract"). We have to surpass the illusion that the law will save our community.[13] We have turned out to be legalists, we have proclaimed more laws, we have approved more complicated laws, to the point that nobody can yet know and understand them all. We publish laws, rules, interpretations etc. We are overwhelmed, we are drowning in laws and yet we are unable to see that we do not need more laws to live in harmony, but that we have to surpass this legalist view. Community life cannot be subordinated primarily to laws, it has to spring from a basic social contract, as the expression of the desire to live together. That appears to be the main problem, not the lack of more laws.[14]

The law is necessary of course, it exists to grant a certain legal security, it exists to resolve conflicts (even to prevent them). The law is not bad, but it cannot be the foundation of a society. The law follows the basic and initial agreement to live together. As long as we do not try to build a community where we are glad to live, where everyone contributes to the common good, the law will not save us[15].

1.3 The Law in the Bible

Speaking of salvation, it may be time to turn to the Bible to reveal some interesting parallels. If we look into the Bible to see the function the law plays there, it will be pretty evident that the Law is a very important item, but that it is not central in God's Revelation of our Salvation.

The function of the Law is to show what sin is. "What, then, was the purpose of the law? It was added because of transgression until the seed to whom the promise referred had come" (Gal. 3,19). "Now we know that whatever the law says, it says to those who are under the law, so that every mouth may be silenced and the whole world held accountable to God. Therefore, no one will die declared righteous in his sight by observing the law. Rather, through the law we become conscious of sin." (Rom. 3,10-20).

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[13] Pope Paul VI[th] recalls that: "The law is necessary, but it is insufficient to establish real relations of justice and equality. (…) If, beyond juridical rules, there is a lack of more profound sense of respect and service towards the other, even the equality before the law could serve as an alibi to flagrant discriminations." Paul VI (1971) *Octogesima Advenians*, nr. 23.

[14] Pope John Paul II stated that: "Experience demonstrates that often negative forces like resentment, hate and even cruelty have won. Then the desire to reduce the adversary, to limit his liberty, or even to impose a total dependency on him, becomes the fundamental motive of action, and this opposes to the very essence of justice that, by nature, tends to establish equality and equilibrium between the parties in conflict." John Paul II, (1980) *Dives in Misericordia*, nr. 13. He reminds us of the axiom *"summum ius, summum iniura" ibid.*

[15] "It is a good start for public authorities to observe the letter of the law, but not enough if the law in a particular country does not protect what are there regarded as the basic entitlements of a human being". Bingham (2010:84).

It is evident that our relation to God is not based upon the law, but on His Loving Grace. The law does not save, neither does its compliance. The law is the reference to know which conduct is reproachable, but to comply with the law is not sufficient to be saved. Saint Paul recalls that to comply with the law is to comply with all the law, and that seems humanely impossible. Not to comply with just one single aspect of the law, is not to comply with the whole law. There is the rub, for the only thing that can save us is to surpass the blind and complete compliance of the law and put our faith into the Lord Jesus Christ.

"If you are led by the Spirit you are not under the law" (Gal 5,18). The only way to comply with the law is to surpass the law: "The entire law is summed up in a single command: 'Love your neighbour as yourself' (Lev 19,18)" (Gal 5,14). That is to say that to comply with the law you have to do something which is different than the law: to love. That is to be led by the Spirit, not by the law.

The law does not save, love does. It is in this sense that we have to understand Jesus' reasoning: "Anyone who breaks one of the least of these commandments and teaches others to do the same will be called least in the kingdom of heaven, but whoever practices and teaches these commandments will be called great in the kingdom of heaven. For I tell you that, unless your righteousness surpasses that of the Pharisees and the teachers of the Law, you will certainly not enter the kingdom of heaven." (Mat. 5,19-20).

It seems paradoxical: in the first place Jesus announces that he/she who does not comply with the law will enter the kingdom of heaven. There he will be considered the least, but he will enter anyway. One could think then that one does not have to comply with the law. But the following verse announces that if your justice is not bigger than that of the Pharisees and the teachers of the law (who are the specialists in complying with the law) you will not enter the same kingdom of heaven. How does this sum up?

The point is to surpass the practice of the law, to be righteous in another way than the Pharisees, that is, their way of understanding the law literally in its smallest aspects, even by paying the tithe of insignificant products like mint, dill and cumin (Mat 23,23). But doing this, they neglect "the more important matters of the law: justice, mercy and faithfulness". Is that not what Jesus did with the woman caught in adultery? He did not rule blindly by the law (which would have been unjust anyway because the man with whom she committed adultery was nowhere to be found). He recognized the woman as such and he also recognized the men who accused her, with their stones ready in their hand. His sentence impacted in every heart of those who were present: as much in the woman as well in those men. This recognition of their state and their relation to the law no doubt had a permanent impact in their respective life. All went away, all men and the woman, changed by the recognizing attitude of Jesus.

Our relation with God and amongst ourselves is based on the Covenant,

graciously offered by God. Our relations are not based fundamentally upon the Law. This implies that Divine Justice is not based on the Law either, but on Love. If God were to judge us according to our compliance of the law, or even according to our good deeds, we would all be damned. But the Salvation he offers through Jesus Christ is based on His Love. Mercy and grace are his measures. Not compliance of the law[16]. God's Justice extends beyond the law. So should ours.

1.4 Back to Justice

I would like to conclude this first chapter recalling that Justice is not about the law but about something else. In other interventions I have already quoted a formula which, to me at least, expresses exactly what Justice is about. The formula is about four thousand years old, and comes from the inscription in the grave of a pharaonic judge from the XIth Dynasty. It describes the kind of Justice this judge is supposed to have held. "I have judged a case according to equity (ma'at), in such a way that both parties walked out with a peaceful heart".[17] For me that is exactly what Justice is about. It is not a winner-takes-all-game, or a zero sum game, where what one gains is the other parties' loss. On the contrary, it is a positive sum game, where both parties and the community gain. It is about restoration of lost harmony, it is about regained social peace.

Our penal justice seems far away from this principle. It accuses, determines who is the culprit, and it condemns him/her. Our Justice system is about culpability, not about responsibility. It condemns, it neither pardons nor restores[18]. It tears up and divides (the good ones on one side, the bad ones on the other), it does not reconcile[19]. It does not

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[16] It is interesting that mercy has always been part of our human justice. "The coronation oath included a promise to exercise justice and mercy in all judgments, an oath still prescribed by the Coronation Oath act 1688". Bingham (2010:11). That makes the difference between the justice of the law and the equity which the judge should produce, according to Aristotle (1962). *Nichomachean Ethics***.** Englewood Cliffs: Prentice Hall, Book five, 1137b, p. 141-142.

[17] Menu, B. (2005). *Maât, L'ordre juste du monde*. Paris : Michalon, p. 80. The task of judging is very burdensome and implies a great responsibility. In the Old Testament judging is sometimes likened to walking in the steps of God himself. "Il faut aussi se souvenir que la Torah appelle parfois le juge par le mot 'Elohim' (Ex 22,7), qui est l'homonyme exact de la facette divine de la justice." Assous, Ph.-S. (2003). *"Oeil pour oeil..." Blessure d'un homme à son prochain dans la littérature rabbinique*. Paris: Safed Éditions, p. 11.

[18] "Does not the law put us often in a situation in which we are tempted to hate ourselves and not to hate wrongdoing?" "Love opposes the law's rigidity; it reminds us of the singular character of each person". Gaziaux, É. (2000). Entre exégèse et éthique: la problématique de la loi. In *Revue théologique de Louvain,* Leuven, no. 31, p. 331.340.

[19] Paul Ricoeur reminds us that "Punishment may reestablish order, but it does not

recognize the person, only the transgression, the punishable act, and in doing so it reduces the person to his/her act. This kind of justice does not recognize the human being as such. I would like to distinguish knowledge from recognition. In other languages there is a difference in vocabulary: "connaître" and "re-connaître" in French, "kennen" and "erkennen" in German. Our justice seems to be limited to knowledge (knowing what has happened and who's done it). But Justice should be about recognition. In the recognition of the person as such, and thus as a subject of rights, the sentence may be experienced as an act within this recognition, and not as an act of blind vengeance[20].

Justice should be about recognition, not about vengeance. In the way it is usually put into practice, it seems to be rather in the latter's garden. This aspect is central if we want Justice to be positively appreciated. If an accused feels he/she has been recognized as a person before all, he/she will be able to recognize the wrong caused and be willing to repair. It is this recognition that gives authority to the Justice system. What is authority? Authority authorizes the other to be[21]. That is God's Authority, which gives us life. That is the authority which we should exert in Justice as well, to show how precious we all are in the eyes of the others, in the eyes of God[22].

I fear that what people experience in our criminal justice system is exactly the contrary. The accused (and even the victim) have no value as persons, there is no recognition, and therefore Justice is not rendered. There is punishment, but not Justice. Relations are teared up, not restored, which burdens the future of that community. This seems far away of what we have tried to present here as Justice.

If we agree on what should be called Justice, we will also probably agree that our Prison System does not contribute much to Justice. Even for a confessed criminal, conscious of his crime, our penal system does not

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restore life". Ricoeur, P. (1995). *Le Juste.* Paris: Esprit, p. 199.

20 Ricoeur (1995:191). Kant writes about "respect" in the sense that at represents a value which hurts myself love. Kant, I. () *Fondements de la métaphysique des mœurs*, Chap. I note, Paris: Delagrave, p.102. In the same sense, "In the act of recognition, there is a kind of de-centering in the subject, because it concedes to another subject a 'value' which in itself is source of legitimate demands that encounter myself love. (…) recognizing somebody it confers him/her a moral authority on me and I am prepared to treat him/her in the future in function of this value." Honneth, A. (2008). *La société du mépris. Vers une nouvelle Théorie critique***.** Paris: La Découverte/Poche no. 287, p. 238**.** "[…] that peculiar lack of respect which consists of not being seen, not being accounted as full human beings" p. 13. Mutual respect should be based on reciprocity "If we ask nothing in return, we do not acknowledge the mutual relationship between ourselves and the person to whom we give." p. 219. Sennett, R. (2003). *Respect in a World of Inequality*, New York – London: Norton.

21 I owe this expression to Father Gabriel Nissim OP, who expressed it at the BICE Conference on Children's Right to Education at Unesco in Paris on May 25th 2011.

22 Idem.

seem right; first of all, because there is a clear bias in our penal system. It seems that most of the inmates are from the same groups: economically and culturally disadvantaged people, who usually represent a marginalized group in society. White collar crime is still largely untouched by the Justice system. If you are poor or marginalized, you are more likely to end up in prison than if you are from a "respected" group in society. Secondly because those who end up in prison usually did not have their defence guaranties respected. Thirdly because the justice system supposes a certain citizen profile to which some groups do not respond. They have not been granted the access to educational, social and cultural resources needed to respond to that typical citizen profile. Fourthly because once the "crime has been paid", the ex-inmate still bears the stigma of having been in prison. It will stick to him and prevent him of reintegrating society again. This means that in practice the justice system is not fair. It does not live up to the expectations it creates. It says that if you pay for your crime everything will be fine again, but in reality it is not true. It is like getting over-indebted: you never stop paying back. You seem trapped to go on paying all your life.

This is not the place to answer the question why this is so. I have tried an answer in the ICCPPC Congress in Esztergom[23]. I will now turn to another concept to complement the idea of Justice: Reconciliation.

2. Reconciliation

As a second item, I would like to share some ideas on Reconciliation, in order to link them later on, in a third chapter, to our Prison Ministry. For this section I will draw from different sources, without pretending, of course, to give an encompassing and all-inclusive overview of the concept.

I found some very inspiring remarks in an article by an orthodox theologian, Athanasios Papathanasiou[24]. He starts by stating that "division between human beings is a wound, a trauma", that "sin consists in man's affirming his autonomy, enclosing himself in his own essence, and, ultimately in death. Thus death is interwoven with individualism, but life is paired with relationship". "Repentance and reconciliation only make sense if it is accepted that the orientation of the human being in all its dimensions (personal, cultural, political, etc.) can change".

Now, "(reconciliation) is a matter first and foremost not of going back (as the prefix re- might suggest) but of going forward. It is a matter not of human beings returning to some lost paradise but rather of the entire

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[23] Maat, B. van der (2009, Jan 24th). Prison Ministry in Societies facing Drastic Injustice. Chap. 3, *ICCPPC Conference "Catholic Prison Pastoral Today – Meeting the Challenges"*, Esztergom, Hungary.

[24] Papathanasiou, A.N. (2006). Reconciliation: The Major Conflict in Postmodernity. In *Greek Orthodox Theological Review*, Holy Cross Greek Orthodox School of Theology, Vol. 51, Spring-Winter 2006, nr. 1-4, p. 155-165.

universe attaining to that future for which it was created, but which has yet to become a reality. (…) Whereas in general the future is regarded as an effect of the past, for the church the cause of the past (and of the present) is the future. The Incarnation of the Son did not take place as a result of the past fall of our forefathers but for the sake of the future transformation of creation into the kingdom. (…) History is illuminated by the light of the last times, the eschata. Thus the eschata are imprinted upon the present in such a way as to reveal the relational mode of existence of the Trinity and the communal character of the kingdom."

"It is indicative that the Greek equivalent to "to forgive" is synchorein, which means to "come together", to "meet the others". "Forgiveness is not a juridical decision but the restoration of the communion which has been damaged by sin."

In this very inspiring article, the author of course is not concerned about penal justice. His aim is to help us "*to become faithful listeners to the Spirit*". Nevertheless, his ideas can help us listen to the Spirit in the reconciliation process in which we are all involved. I would just like to highlight some aspects: the link between life and relationship. This link will help us break through the mortal habit of reducing people to their mere individuality, without looking for their relationship, which brings them (and us) to life.

Another aspect is the Christian vision of the perspective of the future. Reconciliation is not so much concerned about analysing the past, but much more about building the future. A Christian view does not look back to condemn the past, but analyses the present in the light of the future, of what is possible, of what can be done. This is especially true when accompanying inmates.

A third idea is that forgiveness means restoration of communion. That is what restorative justice is about. Restorative justice is about forgiveness too, neither about oblivion nor fixation.

"Reconciliation (…) is derived from the Latin words Re and conciliare or re and conciliatio. They combine to mean the restoration of friendship or a state of harmony. It means to bring back to a state of peace and mutual co-existence."[25]

I would like to put this issue of Reconciliation in an African context.

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[25] Ojemen, C.A. (2010). The Promotion of Peace and Reconciliation in Nigeria through Justice: A Perspective from Canon 287. In *Ephrem's Theological Journal* Satna (India), vol. 14, October 2010, nr. 2, p. 157. In this article the author analyzes the implication of Canon 287 - which states that "*Clerics are always to do their utmost to foster among the people peace and harmony based on justice*" - and the political implications of this canon for the same clergy. For some practical implications of Restorative Justice for the Church see: Pope, St.J. (2010). Restorative Justice as a Prophetic Path to Peace. In J.Y. Tan [Ed]. *The Catholic Theological Society of America, Proceedings of the Sixty-fifth Annual Convention, Cleveland Ohio.* Cincinnati Oh.: Xavier University, vol. 65, p. 19-34.

In the scope of this article I cannot analyse the 2nd African Synod whose theme was precisely: *Reconciliation, Justice and Peace*. But I cannot pass by the occasion to tackle, although only superficially, some aspects of reconciliation in the African context, because it can help all of us, non-Africans, to reflect on our own cultural traditions and to enrich them[26].

Engelbert Mveng, a founding father of African theology, whom I was lucky enough to meet years ago, stated that "The fundamental reality in African tradition is life."[27] Life penetrates all other aspects: individuality, community, society. For example, one does not belong to one's parents in the first place, but to the whole clan, from the ancestors, who are the source of fecundity of the couple[28]. That is why "the individual can realize himself as a human person only and with the community. This likewise means that one's personal conduct – indeed all that one does – affects the entire community of the living, the deceased, and the unborn. Through his conduct and his actions, the individual has an effect on the entire cosmos."[29] It is in this context that "palaver" takes place. Palaver can be understood as an ethical model that does not just consist of an exchange of arguments, as a discussion meant to reach a consensus. It is rather a dialogue that aims at healing a broken relationship.[30] It works through the word and involves the whole community, because "[T]he word is sacred and is so significant for the entire community of humankind that it may not be monopolized by any one individual, even by a chief. The word is essentially an instrument of communication, allowing various members of the community to share their experiences of life with one another; this makes it possible for them to share life, so that all may have life in fullness. (…) The norms established in the palaver reflect the experience of the community and represent a continuous summons to the individual, in his ethical conduct and decisions, to interpret the norms on the basis of the community."[31] That is why "Morality cannot be privatized; one is not moral on one's own, merely for the sake of self-realization. Rather, it is by definition an interaction among all the members of the community. It is

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[26] I am grateful to Gerhard Loman who brought and lent me some very interesting and recent material from Africa on this theme.

[27] Mveng, E. (1985). *L'Afrique dans l'Église. Paroles d'un croyant*, Paris. L'Harmattan, p. 53, quoted in A. Lentiampa Shenge (2011). La promotion du pardon en Afrique. In *Nouvelle Revue Théologique*, Bruxelles. Faculté de Théologie de la Compagnie de Jésus, Tome 133/nr.3, juillet-septembre, p. 409.

[28] Quote from Marie Viviane TsanguMakumba in ibidem p. 410.

[29] Bujo, B. (2003). *Foundations of an African Ethic. Beyond the universal claims of western morality*. Nairobi: Paulines Publications Africa, p. 156.

[30] Bujo, B. (2003:68). See also the practice of healing in M. Hill; H. Hill, R. Baggé & P. Miersma (2010[2]). *Healing the wounds of Trauma. How the Church Can Help***.** Nairobi: Paulines Publications of Africa, 112 p.

[31] Bujo, 2003:157.

always a give and take, for its goal is that all may have the fullness of life, and this ideal can be mastered only in common. Ultimately this means that one becomes a human person only by means of other human persons, as a proverb from west Africa says: "Life means sticking together – on your own you are an animal (…) I am because we are, and because we are, I am too".[32]

It is in this context that reconciliation can effectively take place. As Fr. Lentiampa Shenge SJ states: "In African tradition every single injustice is in the first place an attempt on life" (and not on material property) "Thus it is in a context where life is the supreme value that gives its sense to all other values, that the concept of forgiveness can be thought of in Africa."[33] He recalls that forgiveness is a concept that belongs to the religious sphere. It is not normally part of a judicial discourse, which is rather based on reciprocity and paying debts or faults. This does not mean that forgiveness is to substitute justice. Quoting the philosopher Jacques Derrida he writes that: "forgiveness is not and should neither be normal, nor normative, nor normalizing. It should remain exceptional and extraordinary".[34] "Forgiveness does not pertain to the juridical order, (…) it is in the sphere of an economy of the gift, in virtue of the logic of overabundance which it articulates and which has to be opposed to the logic of equivalence that presides over justice."[35] Forgiveness is something added to justice. If justice can restore the equilibrium hurt by the conflict, forgiveness enables the reinforcement of the vital force. "Only forgiveness can produce reconciliation, by recreating a positive link with the past, renewing it by a surplus of good against evil, of life against death. Only forgiveness can really accomplish what justice is aiming at, namely restoration of social relation and the reinforcement of life in society."[36]

In this context I would like to recall what I have said about the necessary recognition of people. Forgiveness, which is an essential part of the reconciliation process, is not possible if there is not a profound recognition of the other. "Forgiveness unties the act of its consequences, and it unties the agent of his/her act. (…) forgiving a person who recognizes his deed, untying him/her of his reprehensible act, is to reaffirm that this act does not affect his/her 'primitive disposition to do good', and so, as

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32 Bujo, 2003:160.161. Cf. "*For whom is alone, life has no meaning, it does not have the chance of subsisting very long.*" Lentiampa Shenge (2011:410).

33 Lentiampa Shenge (2011:415.411).

34 Lentiampa Shenge (2011:417). A way to understand this better is recalling that for-give-ness is a gift, as is clear in many languages: par-don, per-dón, Ver-gebung, ver-gif-fenis. So it cannot be achieved by judicial decree.

35 Ricoeur (1995:206).

36 Lentiampa Shenge (2011:418). "Love is before anything else absolute demand of justice, that is, the recognition of the dignity and the rights of the neighbor. And justice can only attain its interior plenitude in love." *Justitia in Mundo* (1971) nr. 37

his 'disposition to do good' remains intact, he/she is capable of an act of another nature than the reprehensible act committed. Forgiveness is thus a way to reaffirm the capacity of the culprit to do good and to give him/her the occasion to actualize this capacity."[37]

Forgiveness can only occur when there is a plain recognition of the person, because then he/she is thought of being much more than his/her crime, and, as such, capable of transcending the criminal act committed. This recognition implies that both the one who forgives and the community are aware that the member of their community is a person. "The accused has to experience recognition, at least as a rational being, responsible, which means, author of his acts."[38] This recognition restores the person and permits him/her to reintegrate the community and to be at the eyes of the victim. Both are liberated and regenerated in this reconciliation.

That is what the Lord has come to accomplish. The reconciliation he wrought implies the recognition of mankind as capable of assuming its divine origin. We are recognized as persons, created in His image and, as such, valuable in his eyes. We are invited to do the same, not to judge and condemn the other (cf. James 4,11-12) but to forgive ourselves and the other(s), and so reinforce our community.

3. Prison Chaplains, Justice, Peace and Reconciliation

In this last and concluding chapter I would like to recall some concepts that have been worked on in the previous chapters, to land on some practical implications for all of us. What can we do as prison chaplains to promote Justice, Peace and Reconciliation?

I assume that, after the former two chapters on Justice and Reconciliation, the intrinsic link between both concepts is clear. Pope John Paul II stated: "No peace without justice, no justice without forgiveness."[39] If we really are looking for social peace[40] in our communities, all over the world, we need to focus on Justice in the first place. No society, no community can survive without Justice. But we have to go a couple of steps further. Justice is not the only condition for social peace. As we have seen, our communities and societies depend on the will and desire to live peacefully together. That

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37 Lentiampa Shenge (2011:414).

38 Ricoeur (1995:201). Ricoeur continues: "Until the sanction has not been recognized as reasonable by the condemned, it has not reached him as a reasonable being."

39 John Paul II, Message for the World Day of Peace: "No Peace Without Justice, No Justice Without Forgiveness" (08.12.2001), 14: *AAS* 94 (2002) 139, as quoted in the *Instrumentum Laboris* of the Synod of Bishops. II Special Assembly for Africa**,** nr. 69**.** In: http://www.vatican.va/romancuria/synod/documents/rc_synod_doc_20090319_ instrlabor-africa_en.html#_ftn27

40 I take this notion of social peace from. Ricoeur (1995:190) and (2001) *Le Juste 2*, Paris: Esprit, p. 265.

stands way above the legal structures. This desire of conviviality implies that there be spaces of recognition of every member as a person, with his/her needs, particularities and possibilities. In this recognition as human beings, as brothers and sisters with equal dignity, reconciliation will be a constant necessity, for we all go astray some way or another. But if, in the case someone went out of the accepted way, we can sit together, talk the matter over and reconcile all three parties: offender, victim and community, through an accepted process to restore the interrupted relations in the community, we will be able to restore harmony and social peace. This way implies a lot of good will, the sacrifice of our narcissistic desires and the plain recognition of the value of every participant. It is an uphill battle, but the results of this difficult process are far more convincing than the poor results the prison system scores.

Now, many of us will probably say that this is all very interesting, but that it really is out of our reach. We are only prison chaplains, we are not Members of Congress, Ministers of Justice, etc. That is right. However, we do have an important role to play. I will just enumerate some actions we can undertake.

3.1 Keep on walking "The Lord has given me a tongue to sustain the weary" Is 50,4

The first thing to do is to continue our work within prisons, not to let our arms down and despair. We probably all have felt the temptation that what we are doing is useless, that this system will never change, that we are just a drop in the ocean, that we have bitten off too big a chunk to swallow. However, the Kingdom is not a question of statistics, but of quality. Whenever we succeed to recognize one single human being as brother or sister, whenever we can help stand him/her up on his/her feet to walk as a human being, recognized as image of God, the Kingdom is near. We are to sow, but maybe it is not up to us to reap the harvest. We all have experienced the recognition of people whom we maybe did not even remember, but who have felt the Lord's presence and the Spirit's strength through our action. We should keep going and never stop, because unknowingly we are sowing the seeds of the Kingdom.

Now, of course, we should try to work as effectively as possible. That is why we should always keep in mind some of the following points.

3.2 Strive for recognition

If we are convinced that reconciliation in our societies is necessary and possible, we should of course strive to make it happen. The basic condition is to recognize all human beings, without regard to their condition, as plainly human, with the full dignity which a child of God deserves. The basic rule Jesus left us is to love our neighbour as ourselves. As Cardinal

Martini said: "Love thy neighbour as yourself, or, to quote the original Hebrew text: love thy neighbour because he is like you. If I know that the other is made of the same timber as I am, that he has the same strengths and weaknesses as I have, this closeness will also give me strength to love him. If I feel separated and if I think that he is bad and I am good, that he is weak and I am strong, then I do not love him. If I know that we are all in the same situation, that idea will awaken my sentiments and compassion and love. {...) Jesus cites the Scriptures saying: we have to protect the weak, forgive the culprits. We have to learn to resolve conflicts, dissolve enmity, build peace".[41]

In our work we constantly have to remind ourselves, and all the people around us, that the persons we are treating with are fully human, and that they cannot be reduced to some kind of inferior race. I myself have had to tackle the sarcastic remarks of many prison officers: "oh brother, why are you wasting your time on these people, they will never change, they are not worth your efforts. Why don't you help us instead?". On the other hand, years after a workshop on human rights with police officers, a policeman told me "you know, before the workshop I just tried to do my best in prison, the way I was taught to. I was trained as a traffic police officer, so I considered all these prisoners like types of cars and trucks that had to be regulated in their mobility through the prison. After the workshop you gave us, I was able to consider these inmates as people with a face, not as trucks. Thank you for that." I received this comment years after the workshop, which, in itself had been evaluated by our team as quite useless, because we had not seen any immediate results. This single testimony made it worthwhile doing the Seminar.

Each time we can convince someone of the dignity of the person, we have made a big step towards peace and reconciliation. We have to convince in the first place the inmates themselves, who often do not consider themselves as good men or women. Once an inmate told me he wanted to stop this kind of life (he was a bank robber, but "too old to run now" as he confessed). However, he felt that it was too late, that he had grown so twisted and crooked, that to put him back straight would just break him. I could only tell him that, to the Lord, the most important thing was to bear fruit, no matter how twisted or crooked the tree was. And that he could bear good fruit.

However, not only the inmates have to be convinced of their own dignity. The prison and justice officers have to be involved in this process too, as well as the relatives, neighbours and friends, who all sometimes

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[41] Martini, C. & Sporschill, G. (2003) *Coloquios nocturnos en Jerusalén*, Bogotá: San Pablo, p. 40. See also Karl Rahner's reflections on prison pastoral care in his speech to prison chaplains in Rahner, K. (1956/2004). The Prison Pastorate. In *Justice reflections*, issue 6, JR39, p. 10-13.

regard the inmate as an inferior being, unable to behave humanly. If we can convince all people in our small circle where we act that we all have the same dignity, the first big step towards justice, reconciliation and peace will have been taken. There will be no justice, nor peace nor reconciliation as long as someone somewhere doubts about the dignity of anyone else. Working, as we do, in the justice and prison system with people who are often convicted for very serious and hideous crimes, we are in a privileged position to speak out for them. Our voice has a weight which we sometimes do not consider. If experienced people like prison chaplains can give testimony that these inmates are really people, who react as people when treated as people, and not as beasts, then our voice will be heard, in the prison system, in the courts, in the families and neighbourhoods, in society. We have to speak out and induce a process of recognition. Without this recognition not much will be achieved.

3.3 What kind of Justice are we promoting?

The second step will be to help society in its evaluation of the justice and prison system. We have an expertise as prison chaplains which we should share with society, with the so called specialists of the justice and prison system, to look together for better models of achieving justice in our societies. We have to break through the thick prejudices that surround the prison system with its retributive, costly and ineffective apparatus based mainly on revenge, not on justice; and centred on the judiciary, not on the victim, the offender and community.

As we have seen, a fundamental bias has occurred in the way societies view their penal justice and prison systems. We want to feel safe, and to that end we do not mind shutting people up. The lack of recognition of the other, makes that we are not all equal, but - to paraphrase George Orwell's famous statement in Animal Farm – that "some are less equal than others". Some people are not considered worthy of the same rights as we have, because they are not like us. This makes us bear and sustain a prison system that not only is highly biased and unjust, but that, on top of that, is inefficient to promote social peace, and highly irrelevant to the victims of crime.

From our expertise and our reflection, we have to promote a debate in our society. We have to open a palaver process in our community on this theme. We may find important allies amongst the members of the Judiciary and also of the Prison System, who are also aware that this cannot go on. But we should also install the debate within our own Church. The American Bishops made a very important contribution to the reflection on justice and prisons in their 2000 Document. We should reinitiate this discussion from the basis they laid down.

3.4 From Justice to Reconciliation

We should contribute to the debate on penal justice and prison reform from our strength, which is the way we, as Christians, view people. We defend an anthropology that is based on the recognition of each human being as created at the image of God, and hence worthy of respect. This recognition sustains a different concept of what society and justice is about. We cannot permit the condemnation of a human being, just because he has committed a crime. We keep on believing that he/she is much more than his/her act. We strive for recognition and reconciliation. We do not deny the necessity of Justice, but we sustain that the aim is not blind application of the law, but rather the restoration of harmony, expressed in social peace. The message, based on the Lord's Gospel should be extended to all. Recognition and hence reconciliation, where everyone should admit that nobody is exempt of responsibility and even of culpability of what happens in our society. This common responsibility makes us change our vision and adapt our concepts regarding the offences in our community. As prison chaplains we have a special responsibility to proclaim the dignity of all, victims and offenders, and to promote the search of a society where this recognition really can develop.

Chapter 2
Catholic Prison Ministry
'The Light at the End of the Tunnel'

Ruth Webber

1. Literature Review

Prison ministry has an important role in providing genuine human contact and provides a place where prisoners can interact with each other and the ministry team in a positive way. The church makes it clear that prison chaplains have a role much wider than a specifically religious one.

> *[T]he environment of penal institutions offers a privileged forum for bearing witness once more to Christian concern for social issues: "I was ... in prison and you came to me" (Mt 25:35-36).*[1]

Henry Covert who was a Catholic prison chaplain examined the role of the Church in offering encouragement, healing and transformation. He claimed that many prisoners want to change and that the prison experience invites a transforming reflection as they see themselves through the eyes of other inmates and often do not like what they see[2]. This can be the start of the rehabilitation process and the re-building of relationships as noted by Todd Clear and his fellow researchers in their examination the value of religion in prison.

> *Being in prison serves as a disconfirmation of the worth of one's life... But for some inmates ... these attacks against the self, represented by the prison term, is too real to be denied. A certain truth about their lives must be confronted: the final failure of their choices. Religion in its substance holds possible routes out of the dilemma, for it not only explains the cause of the failure, it also prescribes the solution"* [3]

Both go on to state that a most powerful message of imprisonment is guilt. Religion can be a way of atonement for the wrong that they have done and to receive forgiveness which enables them to feel "an inner sense of peace".

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1 Pontifical Council for Justice and Peace (2004), *Compendium of the Social Doctrine of the Church*, Libreria Editrice Vaticana, n. 403.

2 Covert, H. (2014). *Ministry to the Incarcerated*. Pennsylvania: Loyola Press., p.9.

3 Clear, T., Hardyman, P., Stout, B., Lucken, J., & Dammer, H. R. (2000). The value of religion in prison: An inmate perspective. *Journal of Contemporary Criminal Justice, 16*(1), 53-74. (p.58)

Previous research has noted that religion and spirituality is associated with lower frequency and severity of depressive episodes.[4] Alexandra Enache and seven co-researchers from Romania indicated that the development of moral, family, social and spiritual values through educational programs in prison is beneficial and raises the hope of social reintegration for women prisoners.[5] They go on to state that many women prisoners started praying or attending the religious services in prison believing that a spiritual life is important for reintegration into society after their release.

Other studies have also shown that involvement in the prison religious program and increased religiosity appears to assist prisoners in their adjustment to prison life and to better overall psychological adjustment. Focusing on responses of inmates Clear and Sumter[6] found that higher levels of inmate religiousness were associated with better psychological adjustment to the prison environment and fewer self-reported disciplinary confinements. They conducted a study in the United States about the relationship between religion and prisoners and found that increasing levels of religiousness are associated with higher levels of in-prison adjustment. Religious inmates generally reported higher levels of self-esteem and self-mastery than non-religious inmates. Prison chaplains have the ability to shape the experience of offenders. Chaplains can help prisoners look honestly at their feelings and actions as a way towards repentance and renewal.[7] An Anglican prison chaplain in Victoria, Australia stated "The prisoners see chaplains as 'safe', as people who take time to listen in a non-judgemental way, who treat inmates as individuals not as part of a 'collective'"[8].

Prison ministry offers prisoners hope and provides them with an opportunity to look for spiritual solutions to their problems[9]. This can result in a re-framing of the way they relate to others. Any reduction in anti-social behaviour is a positive outcome for the prison community and for the wider society. If the change starts while the person is still in prison he or she may have a better chance of maintaining the change once

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4 Eytan, A. (2011). Religion and mental health during incarceration: a systematic literature review. *The Psychiatric Quarterly, 82*(4), 287-295.

5 Enache, A., Pasca, V., Luta, V., Ciopec, F., Ursachi, G., Radu, D., Mutiu, F. (2009). Aspects regarding the hope for successful reintegration of female detainees. *Legal Medicine, 11, Supplement 1*(0), S382-S385.

6 Clear, T. R., & Sumter, M. T. (2002). Prisoners, Prison, and Religion. *Journal of Offender Rehabilitation, 35*(3-4), 125-156.

7 Covert, H. (2014). *Ministry to the Incarcerated*. Pennsylvania, Loyola Press, p.7.

8 Chambers, J. (2013). Prison Chaplaincy. In A. V. Anglican Criminal Justice Ministry (Ed.). Collingwood.

9 Covert, *op.cit.* p.117.

released. Thomas and Zaitzow[10] argue that the value of religion in prisons could be accessed on the degree to which it changes predatory and other socially unacceptable behaviours by prisoners.

1.1 Infractions

Prisoners are in close proximity to each other which fosters anger and frustration resulting in acerbating tensions and violent outbursts. Research findings have consistently reported a link between religious involvement in prison and reduced infractions such as disciplinary misconduct, rule violations and violence while in prison. O'Connor and Perreyclear[11] found that the greater number of religious sessions an inmate attended the less likely he was to have an infraction. Likewise Clear and Sumter[12] found that increasing levels of religiousness were significantly related to the number of times inmates were placed in disciplinary confinement for violation of prison rules. The researchers noted that the results differed between prisons in different regions.

Ariel Eyton[13] in a review of twelve empirical studies published in either English or French journals reported that the strongest effect of religion and spirituality on prison life is a reduction of incidents and disciplinary sanctions. A similar finding was reported by the PEW forum[14] which found that after controlling for demographic and criminal history risk factors, there was an inverse relationship between intensity of religious involvement and the presence or absence of in-prison infractions. As religious involvement increased the number of inmates with infractions decreased. The report goes on to state that prison chaplains consider religious counselling and other religion-based programming an important aspect of rehabilitating prisoners. While many reports show an association between religiosity and reduced infractions, one study based on prisoner self-reports did not provide a positive association between the number of self-reported prison infractions and inmate religiosity[15]

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10 Thomas, J., & Zaitzow, B. H. (2006). Conning or conversion? The role of religion in prison coping. *The Prison Journal, 86*(2), 242-259.

11 O'Connor, T. P., & Perreyclear, M. (2002). Prison Religion in Action and Its Influence on Offender Rehabilitation. *Journal of Offender Rehabilitation, 35* (3-4), 11-33. doi: 10.1300/J076v35n03_02

12 Clear and Sumter, *op. cit*.

13 Eytan, *op. cit.*

14 PEW. (2012). The PEW Forum, (2012). Religion in Prisons: A 50-State Survey of Prison Chaplains: The PEW forum on public life. *Pew Research Religion and Public Life Project*. Washington DC.

15 Clear & Sumter, *op. cit.*

2. Catholic Prison Ministry

The Catholic Prison Ministry program in Victoria (Australia) is auspiced by the Catholic Dioceses of Victoria and operates state-wide. It provides activities that cater for the spiritual and emotional needs of an expanding prison population and is underpinned by respect for the human dignity of each person. It is estimated that about 18 per cent of the current prison population in Victoria is Catholic[16]. All chaplains are required to – and do – provide chaplaincy services to all prisoners that seek assistance.

The Ministry team consists of priests who visit on a regular basis to celebrate Mass, chaplains and volunteers. Chaplains can be priests, members of religious orders and lay people. Volunteers fulfil a number of different roles. Volunteer members of the Worship and Hospitality Group offer hospitality and assist in religious services at each prison. They are usually being rostered on a monthly or fortnightly basis. These volunteers provide prisoners an opportunity to meet people genuinely interested in their welfare.

There are approximately 22 priests, 20 chaplains and 60 lay volunteers operating in Catholic Prison Ministry in Victoria. Every prisoner has the right to speak with a chaplain even those in the more restrictive Management Units.[17]

Across Victoria, there are twelve publicly operated prisons, two privately operated prisons and one transition centre. In the State of Victoria (Australia) prisoners have a legal right to practise their faith under section 47 (1) (i) of the *Corrections Act* 1986. The current practice of prison chaplaincy in Victoria is constructed around this legislation. Catholic Prison Ministry Victoria provides chaplains for all prisons. Catholic chaplains, volunteers and priests who celebrate Mass and prisoners who identify as Catholic form the core Catholic faith community at each prison. The chaplains consist of priests, members of religious orders and lay people. CatholicCare – Archdiocese of Melbourne administers Catholic Prison Ministry Victoria.

In 2011, the Australian Catholic Bishops published in the Social Justice Statement *Building Bridges, Not Walls: Prisons and the Justice System*. The Statement aimed to "provide greater inspiration for all Christians and people of good will to reach out to people in jail and assist those returning

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[16] According to the 2011 Population Census, 25.3 per cent of respondents across Australia identified as Catholic, and 26.7 per cent in Victoria (Australian Bureau of Statistics (2011), Census of Population Canberra). The percentage of prisoners in Victoria who identified their religion as Catholic was less than those who identified as Catholic in the 2011 Census. Based on figures accessed on 29 May 2014, 1078 prisoners in Victoria cited their religious affiliation as Catholic, which is 18 per cent of the prison population

[17] Prisoners are placed in 'Management' for serious rule violations.

to society".[18] It outlines how a practical concern for those in prison is at the heart of our Christian calling and is to follow in the footsteps of Christ:

> *... we are guided by the teaching of Christ our Saviour, who never neglected the outcast or the criminal. We remember that the path to his crucifixion led through the gates of prison, and that among his last words was the promise of redemption he made to a condemned man (Luke 23: 39-43).*[19]

3. The Study

Catholic Social Services Victoria and CatholicCare - Archdiocese of Melbourne commissioned an exploration of the operations of Catholic Prison Ministry Victoria to provide information about and insights into this Ministry in order to improve the service.

3.1 Method

The study sought to ascertain how the chaplaincy program assists prisoners, ex-prisoner, families and the wider prisoner community. Previous research has addressed 'what' and 'why' questions around prison chaplaincy but not 'how' questions[20]. This research sought to address this gap.

Data was collected from a number of sources including interviews, written statements, participant observation and analysis of documents (Table 1). Interviews were conducted with twenty-four people including: ex-prisoners, family members, ordained chaplains, non-ordained chaplains, volunteer members of the Worship and Hospitality group and other people who had an association with prison ministry. There were informal discussions with prisoners after Mass in each of the three prisons visited.

Three chaplains in the study had worked for more than twenty years in both metropolitan and regional prisons in Victoria; the remaining chaplains had been involved in prison ministry for less than five years. Two prison volunteers had been involved in the program for twelve years; the other had joined the program more recently. Five prisoners and five ex-prisoners supplied written comments about Catholic chaplaincy during

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[18] Australian Catholic Bishops Conference (2011). *Building Bridges, Not Walls: Prisons and the Justice System*, available at http://www.socialjustice.catholic.org.au/files/SJSandresources/2011-SJS-Statement.pdf, p. 3.

[19] *Ibid*.

[20] Maruna, S. (2001). *Making Good: How Ex-convicts Reform and Rebuild their Lives*. Washington, DC: American Psychological Association Books; O'Connor, T. P. (2004-5). What works, religion as a correctional intervention: Part 11. *Journal of Community Corrections, 2* (Winter), 4-26.

a prison ministry session. In the company of chaplains, and as part of the Worship and Hospitality team, the researcher attended two metropolitan prisons.[21]

Table 1: Participants in the prison chaplaincy study

Participant Category	Interviews	Written responses	Total
Ex-Prisoner	8	6	14
Family Member	4	-	4
Chaplains[22] – religious	2	-	2
Chaplain – lay	1	-	1
Chaplain - priest	2	-	2
Volunteer - Worship & Hospitality group	3	-	3
Prisoner	-	5	5
Other	5	-	5
Total	**24**	**11**	**36**

Careful steps were taken to gain informed consent from participants and pseudonyms have been used throughout. Each person was allocated an identity number within each category. It is acknowledged that this is not a representative sample of ex-prisoners and family members who have had contact in recent years with the Catholic Prison Ministry. This does not negate the veracity of views expressed by participants.

3.2 Results

A. The Ministry team

The role of chaplains is multi-faceted. They provide practical and emotional support, as well as religious and spiritual nurture to prisoners, ex-prisoners and their families. This involves personal, relationship and grief counselling particularly in times of crisis such as family breakdown, illness, trauma and bereavement. They assist prisoners in the restorative process:

> *We endeavour to affirm the inherent human dignity of each person. We aim to enable those in custody to recognise their own dignity and worth, to accept their story without fear and to find some hope in their life. All of this assists their rehabilitation* [23]

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21 The Corrections Victoria website. Available at: http://www.corrections.vic.gov.au/home/prison.

22 In the text, a letter of the alphabet will indicate the category of chaplain – priest (P), religious (R), lay (L).

23 O'Shannassy, M. (2004). Some-one's son. *The Summit. Journal of the Liturgical*

Chaplains undertake numerous practical tasks. For example, if requested they help prisoners filling out forms, attend court with prisoners and ex-prisoners and liaise with organisations which support prisoners. Chaplains also advocate for prisoners' rights and welfare within the prison system and for changes to public attitudes and to the criminal justice system. A chaplain (4P) described ways in which he advocates for such changes: "I speak at forums, write opinion pieces, and liaise with other groups. I work at trying to change public attitude".

The ability of chaplains to be a positive influence on prisoners depends on their reputation for being trustworthy and keeping confidences. Mary Brown a Quaker chaplain who was a volunteer prison chaplain said that in the UK confidentiality was not assured: "A chaplain works for the Prison Service thus you can't offer the confidentiality you would outside"[24]. This is not the case in prisons in Victoria (Australia) where chaplains are not obliged to report what they are told by prisoners to prison authorities unless it is about an illegal activity or a likelihood of harm to self or others as defined by the correctional guidelines[25]. Chaplains inform prisoners that apart from this requirement confidentiality is assured and their reputation for sticking to this was widely known among the prison population.

> *You knew whatever you told her would stay there which is in itself a big deal because up there, there's no one you can talk to or trust enough to talk to because you're talking about stuff that's very, very private, and you don't have to put on this façade. .... There's very few people up there you can trust and just having someone there you can talk to like you would a parent or someone really close to you was amazing.* (Ex-prisoner4)

Overseas research found that chaplains experienced role conflict between supporting a custodial system and supporting prisoners[26]. Chaplains said this did not occur in Victoria:

> *There is no conflict nor have I ever seen it. The two are separate; the chaplains do not have a custodial role and are quite independent from this role.* (Chaplain4P)

Commission Archdiocese of Melbourne.

24 Brown, M. (2014). *Confessions of a Prison Chaplain*. Hampshire: Waterside Press, p. 21.

25 Corrections Victoria. (2007). Guidelines for the Provision of Chaplaincy in Public Prisons (Vol. December). Melbourne: Victorian Government Melbourne.

26 Sundt, J. L., & Cullen, F. T. (2007). Doing God's work behind bars: chaplains' reactions to employment in prison. *Journal of Offender Rehabilitation*, 45(3/4), 131-157.

B. Religious and spiritual

While there are no statistics available, estimates from observers are that attendance at Mass in prison is significantly higher than the 12.5%[27] of the general Catholic population that attends Mass on a Sunday[28]. Some prisoners come to Mass for non-spiritual reasons such as hoping it would help their parole chances, to escape the boredom, for the tea and biscuits afterwards or to get a chance to chat to people from the outside. One man only went to Mass if a particular chaplain was there. However, the study found that many prisoners clearly come to Mass to practice their faith and to meet other prisoners with similar religious values:

> *It was really important going and receiving Communion, as a Catholic, something I've done daily and weekly my whole life. So to have that taken away would be a big loss for me and so we had Mass at all three facilities I attended on a regular basis and it was terrific ... it's comforting for us prisoners to have that.* (Ex-prisoner7)

Previous studies have noted that the chapel is a safe environment in which prisoners can talk about their issues, receive religious and emotional succour, confront their shortcomings and take on responsibilities. This study also found that the chapel is a safe haven and a place where a prisoner may feel protected from threats from others.[29]

> *When they come into this space with loving people around them, there is no shouting, it is place of silence and of prayer. They say "It will get you out of the yard and to prayerful place" The men take the calm back with them.* (Chaplain2L)

The conversations prisoners have with chaplains and volunteers provide them with an opportunity to talk about themselves, their fears and their sorrows. One ex-prisoner (2) said: "It was a time to reflect I found; it was good to have that time every week to reflect". Many prisoners deep down still adhere to the beliefs of their childhood. "It touches base with something they remember from their youth and a desire to reconnect with their spirituality in some way" (Chaplain1R). This was confirmed by prisoners who reported that they found strength in the knowledge that God loved them and cared about them.

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[27] Pastoral Research Office, Australian Catholic Bishops Conference (2013). *A Profile of the Catholic Community in Australia*. Available at: http://pro.catholic.org.au/pdf/ACBC%20PRO%20Catholic%20profile%202013.pdf , p. 2

[28] A chaplain (4P) who has been prison chaplain for many years provided this estimate.

[29] Clear et al, *op.cit.*

Chaplains and volunteers regularly responded to requests for rosary beads or other religious symbols. A prisoner said that she felt calmer and closer to God when she looked at the religious symbols she kept in her room. An ex-prisoner recounted a similar experience:

> *What they provided was a Holy Card with a prayer on the back and that was the most important thing to me throughout my term in prison ... at that time I was at such a low point and I just couldn't be with other people that this prayer was the only thing that offered me hope, at the back it had a picture of Christ over there and for that I'm really, really grateful because that was one practical way that I could hold onto this picture, that I had this picture and I could deal with what was happening in my life.* (Ex-prisoner1)

Previous research found that religion provides prisoners with a road map for life, peace of mind, self-control and to feel better about themselves.[30] Similar outcomes were found in this study. The Mass and other religious activities provided prisoners with a benchmark for which they could judge their own actions.

> *This time provides an opportunity for them to connect with their spiritual self. It provides camaraderie with other like-minded people. It provides a structure of obligation that allows the prisoners to meet certain standards. It helps them to feel accountable for what they have done to themselves, their families, victims, mates and to God.* (Volunteer1)

Some prisoners sought forgiveness and absolution with a few seeking a formal confession session with the priest. A renewed faith provided some prisoners with source for healing and forgiveness and in so doing they gained a sense of purpose and meaning.

> *During this difficult time in my life, I was able to turn to my faith and the Catholic Chaplain enabled me to vent my grief, pain and assisted me with the horrendous circumstances. The Chaplain was a true "God send" and was genuinely concerned with my wellbeing, my family's response to the difficult circumstances and she provided care and support at every stage.* (Ex-prisoner6)

Chaplains present a message of forgiveness, renewal and hope in a non-judgemental manner which seemed to give prisoners the impetus to settle

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[30] Dammer, H. R. (2002). The Reasons for Religious Involvement in the Correctional Environment. *Journal of Offender Rehabilitation, 35*(3-4), 35-58, p.39).

down and to start to think about a way forward. A former prisoner said that the religious and spiritual roles that chaplains play cannot be undertaken by people in other helping professions.

> *... because the Ministry is a spiritual level and you're not going to get that out of talking to a social worker who probably doesn't know God exists or they might which is great if they do, but is not the same, not the same Ministry as delivered by someone, a religious person.* (Ex-prisoner7)

C. Restorative process

An outcome of the religious, spiritual and supportive roles that chaplains and volunteers undertook resulted in some prisoner reflecting on their lives and making an effort to change with a view of reconnecting with their family members and the wider community. The restorative nature of the Prison Ministry stems from a holistic approach to the Ministry.

Chaplains talked about prisoners taking small steps rather than giant leaps in their journey to live differently. While the wider community hopes for rehabilitation of prisoners so that they become worthy citizens who will never re-offend, the reality is that most prisoners returned to prison after serving an earlier sentence[31]. However, they can change in other important ways such as recognising and being contrite in respect to the negative affect they have had on family, friends and victims of crime. They can get in touch with their emotions, avoid conflict and provide support to other prisoners and the ministry team.

> *The guys that come are seeking for a better way, they want to be better men and they want to better people.* (Chaplain1R)

A prisoner subject to an Apprehended Violence Order[32] was beginning to show insight into his previous behaviour told a volunteer:

> *He said: 'I had everything, I hit the drugs I thought I was better than everyone else. Now I need to think about my life... I have to get my life back. I have a lot of time to think about it all'.*

Ex-prisoners indicated that when they first arrived in prison they were often angry, confused and had little hope for the future; the prison system was new to them and very confronting. One man said: "Prison can be a

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[31] ABS 2015 *4517.0 - Prisoners in Australia (2013).* Available at: http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4517.0Main+Features182013?OpenDocument .

[32] An Apprehended Violence Order (AVO) is a court order that aims to protect a person from domestic or personal violence.

dangerous place. Tempers get up quickly". Chaplains provide a calming influence and an opportunity for prisoners to talk about their concerns and fears:

> *She brings stability to people, and it can be a dangerous place prison. ... 'Sister', she keeps the place safe for them (officers) by keeping us under control and doing what she does with us.... She prevents a lot of that stuff because when people are feeling at that point in their life, she will talk to them, she'll sit down and make them see a whole new perspective on things* (Ex-prisoner8)

D. Enhancing self-worth

Imprisonment acts as a public shaming and a confirmation of guilt. Prisoners often accept the validity of society's condemnation, particularly when family members or friends are negatively affected:

> *They are full of shame, guilt, and they judge themselves more harshly than others do. Small incidents blow out of proportion because they have so much time to think about things.* (Chaplain2L)

A person's self-worth is often destroyed in the process of coming to and being in prison even if he or she was well regarded prior to their incarceration.[33] A chaplain described the vulnerability of prisoners:

> *We regularly encounter prisoners who bear the burden of a poor self-image, are mentally ill, are intellectually disadvantaged, are from impoverished backgrounds and in general are vulnerable – most are people who felt rank outsiders and generally have missed out on a positive start in life. From the moment of their arrest they are virtually and literally stripped bare. There is nowhere to hide, no privacy, restricted movement, rigidly controlled access to family and outside – all choices taken from them.* (Chaplain5R)

Some prisoners in the study were successful in their jobs and were well regarded by family, friends and the wider community prior to incarceration. Chaplains reported that the shame and humiliation of being in prison immediately diminished their self-worth. More typically prisoners had low self-esteem prior to their incarceration so being in prison further erodes their self-esteem and morale making them vulnerable to outbursts:

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[33] Macquiban, T. (Ed.). (1994). *Methodist Prison Chaplains: Reflections on a Theology of Ministry and Mission*. UK: Applied Theology Press.

> *Self-worth and self-esteem are something that many inmates have never had. They do not see themselves as ever being able to do any better. They do not know any other way to live. They haven't yet learnt to believe in themselves, nor do they have people who believe in them, who will support them to accept the challenge to change and to step out on new paths.* (Chaplain5R)

As a result of low self-esteem prisoners can become very defensive and react aggressively to negativity and criticism.[34] Ministry team members were clear about the need to treat prisoners with respect and speak to them with a pleasant tone:

> *The role of the Chaplaincy program is to enhance human dignity of prisoners. Prison life means that there is a loss of self-esteem for the prisoners, and chaplaincy helps them to come to grips with what they have done and to help them re-build their self-worth and regain their human dignity, and prepare to re-enter society.* (Volunteer1)

The Gospel message of forgiveness, renewal and restoration provided comfort to prisoners. Several former prisoners talked about how their self-worth was lifted as a result of being treated with dignity by the chaplains:

> *Being treated as people not prisoners – this in turn creates trust which leads to openness, honesty and growth – something rarely seen in the prison. ... Trust and faith is put into the person, which leads to self-worth.* (Prisoner –written comments)

An ex-prisoner (7) said: "The prisoners have to deal with it (guilt) too; they have to deal with the struggle". He went on to explain that those who were able to deal with their guilt were in a better emotional space than those who did not acknowledge and confront their demons. An ex-prisoner who was rehabilitated successfully back into society said that inmates are constantly searching for something to lift their self-esteem and if they can't get it by being valued as a good contributor to society they will get it by being a successful criminal.

> *I would still have those feelings to this day if I wasn't given that self-worth back by them (chaplains). ... And you know what I was constantly searching for? That positive self-esteem and when I saw some of the prisoners they actually got their self-esteem from doing negative acts but at least it was self-esteem.* (Ex-prisoner1)

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[34] Covert, *op. cit.*, p.2.

Chaplains help prisoners find ways to tackle despair, grief and self-loathing. They seek to find and acknowledge prisoners' skills and attributes through counselling and pastoral care:

> *The Chaplaincy program offered to me during my incarceration was very effective and proved to be indispensable to my wellbeing and morale. It provided me Trauma Counselling, Loss & Grief counselling and Pastoral Care. ... She (chaplain) provided me with a peaceful presence, a huge listening ear and offered compassion in the midst of despair and anguish. She made a significant impact in my life and is a true gem.* (Ex-prisoner6).

It takes time for prisoners to accept and adapt to prison life. Support from chaplains helped prisoners to deal with their anger at the system and the frustration of being in prison.

> *They helped us accept our fate as well, to be accepting of where we've found ourselves and not being judgmental as to why, and my situation is just another example of someone who just mucked up a few things really without any intent and that's pretty common and a lot of people who are offenders are not there because they want to be but because they can't help themselves through whatever circumstances put them in that situation. ... They're really talking the Gospel and say we're all equal.* (Ex-prisoner7)

The knowledge that chaplains were interested in their welfare helped to make prison more bearable for prisoners:

> *She's helped me by being there through a lot, like my jail and stuff like that ... she was always there if I needed her ... she's been more of a support base than anyone that's involved in the jails she's excellent ... she was for me. She made prison more bearable by always being there, someone to talk to, someone who listens to you.* (Ex-prisoner2)

E. Affirmation and hope

Chaplains said that they "walk with prisoners on their journey" in a non-judgemental and respectful way. Prisoners recognised and appreciated this approach:

> *She sees everyone as an individual, this helps adjustment. She doesn't judge anyone on crime, race, creed or anything like that; she's always there for everyone.* (Ex-prisoner2)

Chaplains endeavour to focus on the gifts and goodness that they see in prisoners rather the crimes they have committed. They try to help them find their inner beauty.

> *We are non-judging and they like that. I tell them that they are not bad people but have done some bad things. It is really important not to judge them. ... Prisoners find it hard to say something positive about themselves. I would describe their positives so they can see the beauty in themselves.* (Chaplain3R)

Prisoners and ex-prisoners indicated that they were gratified chaplains did not equate them with their crime, but recognised their "good side". This was vital step in them seeing that there was a better way to live:

> *I had that relationship with her (the chaplain) and she really took an interest, she'd go and see my family as well, she did a lot and just made me feel comfortable and didn't make me feel like I was this really bad person, she kept reminding me I'm not and actually I felt normality with her. ... She made you feel normal; she didn't make you feel like a caged animal.* (Ex-prisoner8)

One ex-prisoner said that when he was first admitted to prison he thought he was a really bad person who had let his family and everyone down, but a chaplain gave him hope. Other ex-prisoners told of similar experiences:

> *The only ray of light I had there was that I had the chaplains come in and I rediscovered my faith, I'm a Catholic, but I wasn't at that stage a practicing Catholic so they actually came in and gave me hope, they said I wasn't a bad person, what I did maybe was a wrong choice in life but then they would support me and help me find my way. ... I met 'Sister Kathleen' and that's where she used to come in and it was like a breath of fresh air for somebody from the outside to come in and just offer me hope.* (Ex-prisoner1)

Four male ex-prisoners spoke about having suicidal thoughts while in prison. One man (7) said that he was given hope by the chaplains. Two others said that they would be "dead by now" if they had not had the support of chaplain.

> *Now I was too scared to actually say that I felt like suicide being in there because the problem is they would have kept me longer and I just found it very, very difficult to cope in a situation like that. The only ray of light I had there was that I had the chaplains come in and I rediscovered my faith.* (Ex-prisoner1)

> *I lost everything when I came in, I was depressed and I didn't have the will to go on, I would have been happy if I went to sleep and didn't wake up and I thought about that a few times ... She's unbelievable; she's like someone who has been sent down to help us, someone very different.* (Ex-prisoner8)

Through their encouragement and compassion chaplains were instrumental in helping prisoners increase their wellbeing.

> *'Sister Kathleen' you have done so much for me and with your encouragement and support it really helped get me where I am today. You are a wonderful lady and I appreciate all the time and support you give to me. Thank you.* (Ex-prisoner7)

> *Not only have the Chaplains helped me to find myself but they have touched and helped many of us. Their kindness and generosity in helping us we are grateful for; speaking to the Chaplains in the yard or up at Church can be the big difference in a good day.* (Ex-prisoner1)

Prison can be a lonely time for prisoners, especially as they are living in close proximity to people who they may not like or have much in common. Some have no family or friends visit them. The chaplains' positive and supportive approach helps lessen prisoners' sense of isolation and loneliness:

> *It is a positive distraction from all the doom and gloom you're in when you're in jail 'cause you're depressed, missing your family, your saddened, you're feeling guilt, you're feeling everything six days a week but you have that one day a week when you see someone who you know is not going to judge you or, they are patient with you, tolerant with you* (Ex-prisoner2)

Emotional support was listed frequently by ex-prisoners as having the greatest benefit to them while in prison. They clearly stated that no-one else fulfilled this role in prison.

> *If for some reason the chaplaincy wasn't there, I don't know what those women [prisoners] would do. The prison officer's role is quite separate. We met some beautiful and respectful prison officers as well but their role doesn't allow for the pastoral care.* (Ex-prisoner4)

Ex-prisoners reported that chaplains supported them throughout their stay in prison, even when the incarceration was for many years. A recently released man said that the chaplain supported him during his seven years

in various prisons and after his release.

> *It was all about your emotional support and I was never really a religious person, I went to church on the main days and my family were all Christians and pretty religious but I've lost my faith a little bit and she helped me find it again, helped me come through. I was in solitary confinement at the start for about six months. All new to me ... she came every few days, sit down, say a Hail Mary, have a chat, she just always made it clear that there was light at the end of the tunnel and I wouldn't have got to the stage I got and I think I would have come out a different person if it wasn't for 'Sister Kathleen'. She's been in contact with me the whole time.* (Ex-prisoner8)

The support and constancy of the concern for prisoners' wellbeing provided them with an environment that was conducive for them to seek a new direction. Chaplains were a catalyst for reconciliation.

F. Chaplains as role models

Some prisoners observed how the ministry team treated people and tried to emulate them. Chaplains encouraged them to support one another and invited them into a ministry of support with the result that "some act as chaplains to the other prisoners".

> *The men can be kind to each other. One man had fall in the shower and was in a wheel chair. Another man asked if he would like to go to mass and offered to take him. 'He is a good person so I brought him down' he said to me.* (Chaplain7)

> *Their kindness to one another – it is their hospitality in that they go out and support someone else that day or that week. They care for one another a lot. They are inviting others to join their hospitality. ... They are really good to one another – they look out for one another. They make a buddy and help their friends and nurture each other.... They have a real role to play out there in the prison system.* (Volunteer1)

> *Chaplaincy within the prison system offers an indispensable service that unites inmates with their inner self and the compassionate side of life. They help us feel loved and remind us of the good side of life.* (Written comment by Prisoner)

An ex-prisoner (7) described how gratified he was when he observed a chaplain assisting another prisoner who has having a difficult time coping:

> *While I was in Port Phillip (prison) this fellow came along and spoke to me, and quite distressed. 'Sister Kathleen' came in and walked up to him and talked to him and patted him on the back and was giving him a lot of reassurance about himself and so forth .... how he felt, and how remorseful he was. Just to see Sr. 'Kathleen' being able to give him some solace about him as a human being was enormous, because no one in that place was going to do that, no prisoner is going to do it, the exception may happen and no prison officer could care less so where does his solace come from?*

Previous studies found that prisoners form groups with members providing a measure of protection for each other.[35] However, the level of support and kindness reported in this study seems to go beyond just looking out for a mate. It was not always self-motivated. An ex- prisoner stated that if he disliked another prisoner but saw him at the chapel, he would put aside their differences because of the influence of the chaplains.

> *Say I was not an enemy but just didn't like this one particular person, if I went down to one of the church sessions or chaplain meetings and I saw this person there, the tension would be gone, and there would be mutual respect for each other. Again that's why I say they (chaplains) settle a lot of us; people's emotions are running pretty high in there and they find a medium through the work they do.* (Ex-prisoner8)

Mass and religious education programs provided prisoners with a context whereby they could show a softer side of themselves. This was particularly evidenced in their prayers during Mass. For example, a male prisoner prayed for his sister who was a heroin addict and whose two children were removed by a welfare authority. After the prayer two other prisoners put their arms around him to comfort him. At a service I attended the women prisoners prayed for others, including their families, people of Syria, friends and other inmates.

Thomas and Zaitzow found that prisoners who take leadership roles in religious program have increased prisoner's adjustment, self- esteem and feelings of efficacy and control over their lives than those who are do not take part in religious activities.[36] Prisoners in the study took a role in religious activities which provided an opportunity to use their talents in meaningful and beneficial ways. They set up the chapel and the music equipment, handed out service sheets, did a scripture reading, took part in prayers and helped with the morning or afternoon tea. This may be the only place in the prison environment where they felt appreciated:

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[35] Brown, *op. cit.*

[36] Thomas & Zaitzow, *op. cit.*

> *They bring one another along. ... They have a role to play – giving out the books, helping with the music, putting the chairs out, doing the readings and the prayers. They are given responsibility.... They are proud of the role they play. They want to please you and try to be helpful. You thank them for what they do and treat them with respect.* (Volunteer1)

The exercise of doing something helpful provided an environment that was conducive to small but important changes in the way they see themselves. It takes time for prisoners to develop a plan of how to move on or change the way the live their lives. A prisoner said that having a chaplain available when he was ready to address his past and attempt to transform his life was beneficial:

> *It's in your own time when you feel you need to speak to them or you're making a step in the right direction of life, they are there to help you and that's what people need especially prisoners. They need that help when they need it.* (2)

G. Support for family members

Often relationships between prisoners and family members are strained during incarceration with both family members and prisoners feeling let down but healing can take place. Chaplains can provide the context where by this can happen. One prisoner wrote: "A chaplain helps prisoners to stay connected to their families and helps the families to cope". Chaplains understand that prisoners may try to manipulate them and that they need to understand the context before helping a prisoner establish contact with someone on the outside.

> *I will contact a relative if there is a good reason but I will not be a go-between or do anything that would break the rules. I say 'You know as well as I do that I am not allowed to do that'. I wouldn't risk my opportunity of being here*. (Chaplain3R)

Chaplains fulfil a substantial role in assisting families to cope with having a relative in prison. One ex-prisoner said: 'Your family does the sentence with you and she helped them a lot'. Chaplains offered support and information to family members and linked them to other welfare organisations. The emotional support that family members received from chaplains cushioned them against the negative effects of the traumatic and isolating experience of having a child or spouse incarcerated. They also assisted family members to deal with their anger, frustrations and isolation. Prisoners and their families greatly appreciated this help.

> *She was wonderful because, basically once we knew there was a problem we were able to make contact with her ... So it was really quite confronting and I think in those first few months probably my wife got more comfort out of the Ministry than I did because she knew she could talk to someone about the problems and issues and someone would understand the issues … so that was really important.* (Ex-prisoner7)

Family members can experience great anxiety about visiting their relative in prison. Prisons are like a foreign country to those who have never been inside them. Everything about the first visit is strange. The environment is not conducive to any kind of intimacy. Chaplains were most helpful in helping make the first experience less foreign and helping family members avoid obstacles.

> *She was able to help us in terms of actually trying to prepare us and socialise us to language, environment, clothing, what you could do, what you couldn't do, how the process worked.* (Family2)

Relatives were comforted by the knowledge that there was someone with knowledge of the prison system who was assisting their loved ones inside prison.

> *I could not have got through it as well as I did without the help of 'Sister Bernadette'. ... That actually reassured me that my daughter had someone there for her ... She helped me normalise things.* (Family4).

A father (3) said that he had regular contact with the chaplain over the seven years that his son was in prison. He claimed that she helped him and his wife to come to terms with their son's incarceration and encourage them to maintain contact with their son.

> *'Sister Kathleen' always says to me you can ring me anytime of the day or night whenever you are feeling down and like I said she came and visited us and even by myself a few times when we were on our own.* (Family1)

H. Reducing infractions

Corrections Victoria expects that Prison Ministry fulfils a role in the area of people management which it describes as "being a safety valve to diffuse potentially violent situations".[37] The research confirmed that an outcome

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[37] Corrections Victoria (2009). *Corrections Victoria- Public Prisons: Director's Instructions No 3.7 Religion*. Victorian Government, Melbourne, p.6.

of the Ministry was a reduction in infractions including aggression, violence and angry outburst. Ex-prisoners discussed at length the ways in which chaplains help create and maintain calm in the prison. There are several ways in which chaplains are able to help prisoners to avoid getting involved in infractions.

Firstly, prisoners who attend religious events look out for each other. They try to defuse a situation if they see another prisoner who they met at chapel in a potentially troubling situation.

> *Some prisoners become mates of other prisoners who go to Mass ... and try to help them and look after them.* (Volunteer3)

Secondly, chaplains help prisoners get back onto the right track and to develop strategies to avoid trouble while inside. The accompanying rise in self-esteem also seemed to help them be less volatile and to avoid situations that would lead to serious rule violations.

> *Mass does seem to reduce fights. Part of it is that if we are around we can help the women to develop a way of defusing the situation. I say to them: "Go back to your unit because you know what will happen if you get involved in fight". I will stay with her there until she calms down.* (Chaplain3R)

Thirdly, simply going to religious events meant that during this period and the times when they are interacting with chaplains, prisoners have less time to be involved in infractions. They are also away from those prisoners who may wish to incite violence and conflicts. The prisoners were very respectful of each other during Mass as well to those involved in the Prison Ministry.

Fourthly, the chaplains help prisoners to be less stressed and therefore less likely to get angry and have aggressive outbursts.

Fifthly, the chaplains and the program act as a calming influence on prisoners and the prison itself. A guard at the women's prison said that it would not be as pleasant if the chaplains were not there because they help calm the prisoners and create a warmer atmosphere. Sometimes there is a lot of tension in the units between the men and that in these situations the chaplain act as a calming presence:

> *My role is to bring calm in the middle of the storm. ... The men who come to mass are less likely to be involved in fights and infractions. They are more considerate and have more self-control.* (Chaplain2L)

By avoiding or reducing the amount or intensity of conflicts and angry outbursts, prisoners are in a better emotional space to seek reconciliation and a way forward in their lives.

4. Conclusion

The non-custodial nature of the role of Catholic chaplains within the prison system in Victoria, Australia allowed them to build trust with prisoners and to support them in their struggles. The ministry team provided physical, emotional and spiritual nurture and in so doing provide a context whereby prisoners can develop self-worth, hope for reconciliation with their families and the wider society and a knowledge that God loves them. Some prisoners experienced personal transformation and a renewal of faith which provided a context whereby they could minister to other prisoners. Chaplains and volunteers in the Catholic Prison Ministry Victoria can be pleased with the work they are undertaking on behalf of the wider church.

Chapter 3
65 Years ICCPPC
A History

Gerard Loman

1. Introduction

After World War II there were in some West-European countries head chaplains appointed by the State: persons who are responsible for the good functioning of prison chaplaincy. In most of the countries there was more than one head chaplain for at that time, all was strictly divided according to denomination. In 1950 10 Roman Catholic head chaplains for prisons met.[1] They were on behalf of the Roman Catholic Church responsible for the prison chaplaincy in their respective countries.[2] Until 1972 the group had a weak structure. In 1972 the group had an audience with Pope Paul VI and was searching for a juridical format with a Charter and Statutes.[3] The group was first named Internationale Kommission der Katholische Gefängnisgeistlichen (IKG) and got Statutes. Later the name changed several times and is now: International Commission of Catholic Prison Pastoral Care (ICCPPC)[4]. For a long time German and French were the common languages but for the past 15 years English has been more and more accepted as the main language to communicate.[5] The members were first of all looking for mutual assistance and sharing good practices. Every head chaplain uses this knowledge in his/her own country.

Until the 1990s mainly head chaplains from (western-)European countries came together. They met every three or four years and since 1990 quite a number of participants from other continents have joined.[6]

In 2000 the Commission got an NGO status at UNO and asked formally for a position as Public Association for the faithful at the Vatican. Charter and Statutes are oriented on the Church and since 2013 the Commission

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1 At the first meeting the participants came from Argentina, Austria, Belgium, France, Germany, Italy, The Netherlands, The State New York, Spain, and Switzerland.

2 There is still no counterpart from other churches on the level of head chaplains. Since 1985 there are meetings for individual prison chaplains from all Christian denominations under the name International Prison Chaplains' Organisation (IPCA).

3 See Wit, G. de & G. Loman, G. (2005). Short history of ICCPPC. In *ICCPPC, a Selection of Texts in preparation of the seminar on "human rights of prisoners"* Rome, p. 7.

4 In this article we write shortly ICCPPC or the Commission.

5 Since 1974 the Statutes had 4 official languages (French, German, Spanish and English). That changed after 2000.

6 In 2011 was the 13th World Congress in Cameroon with 150 participants and voting members from more than 50 countries.

is indeed a Juridical Person in Canon Law. From now on a change in the Statutes will not only be a matter of the members, but it has to in accordance with the Congregation for the Clergy.[7] The work is still mainly done in the prison chaplaincies in the countries, but there is also an orientation on the level of international organizations as well on the grassroots level: prisoners are invited to participate in art contests (Art in Prison).[8]

In this article the development of the International Commission of Catholic Prison Pastoral Care is described, a worldwide association of those who are responsible in the name of the Catholic Church for prison chaplaincy in their countries. Paragraph 2 describes the period of grow to an association (1950-1972). The third paragraph sees the next two decades (1972-1990) in view of the congresses. The growth in terms of the structure of the association is presented in paragraph 4. In paragraph 5 we see the developments in the years between 1990-2000 when the Board works in a new structure with a secretariat. After 2000 (paragraph 6) we see 3 main developments: the countries and continents grow in their own way, the Board pays much attention to the NGO work and the ICCPPC is recognized by the Vatican.

2. The long way from a group to an organisation (1950 – 1972)

Already from the earliest times ministers of the Church visit prisoners. Bishop Cyprian from Cartago (200-258) asked his deacons already to visit the prisoners.[9] Later, in 529 King Justinian asked the bishops to visit the prisoners every Wednesday and Friday. Around the year 1200 there were religious orders like the Trinitarians and Mercedarians founded with the specific aim to provide support to the prisoners. Almost 400 years later Vincent de Paul and Carolus Borromaeus developed ideas on reintegration that still sound modern today. Religious care has since the nineteenth century sometimes been seen as a part of prison treatment, with reformation and rehabilitation as a hoped for result.[10] So the diaconal and spiritual care for prisoners is not only a part of the pastoral care for the dioceses, but it is seen also as a public task of the churches. In several countries the churches get an official role in the field that is specific to the State: imprisonment.[11]

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7 See the approval at 13 Oct. 2013, and the Statutes that are accorded since then by writing from the members.

8 See *Art in Prison* (2006) and *Art in Prison* (2009) published by ICCPPC.

9 See Kuhn, C. (2005). Prison Pastoral: the Mission of the Church. In Pontifical Commission of Justice and Peace and ICCPPC, *Human Rights of Prisoners.* Rome, pp. 86 -87.

10 See for this PRI (2001), *Making standards work. An International Handbook on Good Prison Practice,* p. 127. See also Franke, H. (1990). *Twee eeuwen gevangen : misdaad en straf in Nederland*. Utrecht: Spectrum, pp. 356-359.

11 In some countries is questioned whether the State is the only entity that has this possibility. There are experiments with prisons that are run by private organizations.

In 1950 the Sub-Secretary of State of the Vatican, Cardinal Montini, the late Pope Paul VI, invited representatives of a few countries to come to the Vatican to discuss what was needed for the many, many prisoners in Europe after World War II. Many persons were arrested and condemned after World War II for reasons as collaborators and war crimes. One came to realize that at a certain moment these prisoners would be released and had to get a place in society again. What was the best way to implement this? Could the representatives from these countries learn from each other? In a letter to the participants Cardinal Montini wrote in the name of Pope Pius XII how glad this Pope was that this meeting was already in the Holy Year. Participants would study the principles and rules of the Catholic doctrine regarding prison sentences for detainees and how to take care for the spiritual well-being of the prisoners.[12]

According to Mgr. Verheggen, the representative from the Netherlands, in Rome it was decided by this group to investigate whether a regular meeting of head chaplains was feasible.[13] Would a permanent international centre to exchange ideas on experiences and initiatives in prison chaplaincy be possible and advisable? Beside this, could it be stimulated to be in contact with the international conference of catholic caritas organizations on the one hand and with catholic experts, working in the field of prisons on the other hand? Maybe, it would even be possible to become an NGO with a consultative status at the UNO.[14] There are no special notes available from the meeting in Fribourg, nor from latter meetings until 1960. Mgr. Verheggen visited as President several countries to investigate the prison chaplaincy and he was President (again?) in 1972. But the archives are empty until then. We know only that there was a meeting in Rome in 1960.

In 1972 a new meeting took place in Rome with representatives from 9 countries.[15] The Commission was granted an audience by Pope Paul VI, the former sub-Secretary of State, who convoked the first meeting in 1950. The organisation didn't have a name or Statutes at that moment. The representatives decided to create a juridical format and a study group made a plan for a Charter. The group proposed on which questions the Statutes should have to give clarity: The first question was the choice between a simple society of persons who just meets on a regular basis or an association with selected members and a formulated goal. On

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See for example Mason, C. (2012). *Too Good to be True. Private prisons in America.* www.sentencingproject.org

12 History archive secretariat ICCPPC, file nr 11.

13 In 1955 Mgr. Verheggen was elected as President. In his personal archive I found these notes.

14 It is remarkable that this was already suggested in 1950 and only 50 years later became a reality.

15 *Osservatore Romano* 1972 (precise date not known).

which grounds could an association be formed, and according to which legislation should that association work? The Swiss civil code seemed to have the best possibilities to erect an association, so the choice was made for an association according to Swiss Law and the Statutes were adapted accordingly. The second question was: who could be members of the Commission? On this point there was fierce discussion. Finally, it was chosen to propose to the constitutive Conference that only the following could be members: 1.the Chaplain General in office; 2. The delegate for the penitentiary apostolate, appointed by the Bishops' Conference for countries without a Chaplain General.[16] The third question to be cleared was the goal of the association: it was –and still is- to promote the prison pastoral care in the various countries. Congresses would be held every 2 or 3 years.[17]

During the constituent Assembly in London (1974) the Commission was founded. The official name was in German language: Internationale Kommission der Katholischen Gefängnisgeistlichen (IKG). As President Mgr. van den Bulcke from Belgium was elected.

3. Since 1972 - Congresses from 1974-1990[18]

In these years Congresses took place in different European countries: Germany, Switzerland, France, Spain, Austria, Italy. The name of the Commission changed several times. 'International' was a household word, the term "Commission", initially chosen to indicate the informal structure of the executive post, was retained despite an occasional misunderstanding of the title. 'Association' could have been an alternative. But how could we make it clear that the intention was not to bring all individual prison chaplains together? Several terms were used: first the term 'Gefängnisgeistlichen', later 'head chaplains', 'prison chaplaincy', 'prison pastoral care', and 'catholic pastoral care'. Even nowadays there is still some confusion. In some countries the figure of 'head chaplain' doesn't exist. In other countries a bishop sees his diocese as 'self-reliant' and doesn't accept a head chaplain from another diocese. And there are a lot of very small countries with only one prison and so only one prison chaplain.

The Charter on Catholic Prison Chaplaincy was adopted at the Congress in Strasbourg in 1983. In this charter, based on a reflection of the daily practice, the mission of the prison chaplain was presented and it asked

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16 See History archive secretariat ICCPPC, file nr 11.
This formulation has been important in the past years to make clear who is member and who is not. The State recognizes the Chaplain General. When there is no Chaplain General it is the Episcopal Conference, that decides who will represent the country, not a particular bishop.

17 Later changed to 4 or even 5 years.

18 For this part I quoted from De Wit & Loman (2005), pp. 7-9.

the prison chaplains to do their work with lucidity and serenity. The juridical, evangelical and ecclesiastical foundations were made explicit. Prison chaplaincy was described as a help for the prisoner on his way to reconciliation with himself, with others and with God. The role of the Christian community was explicated. The prison chaplain had also a role to sensitize society as a whole for the problems of prisons. The charter is still valid and was the basis for the Statutes. The Statutes have been revised several times.

In London 1974 the Statutes declared that one of the goals of the Commission was: "To assist prison chaplains in their work and to contribute to penal reform by the following means: written documents, congresses and representation at international institutions (United Nations, Council of Europe etc.)."

At the Congress in Strasbourg (1983) the plenary made a declaration asking all Christians "to link up with the Gospel tradition and with the constant practice of the Church through the ages--by an awareness of the problems that beset prisoners and their dear ones. Participants called for alternatives to prison, and, in those cases where imprisonment is unavoidable, to work to make it a more humane experience, and also to be prepared to offer a more generous welcome to all those who have completed their sentence."

The Congress members in Madrid (1985) asked countries to reduce imprisonment of minors and improvement of conditions of those who were in prison; to protect them from mental and physical abuse; to prevent overcrowding; to ensure adequate training for prison personnel. The Congress called upon the Church to supply sufficient qualified prison chaplains, and asked for cooperation between Christian communities both inside and outside prison to ensure that all are treated humanely and with dignity.

In 1987 the Congress was in Vienna and reflected on the philosophy of "imprisonment as punishment" and the inhuman effects for both prisoners and their families where the former had no real possibility of rehabilitation. Congress called for a triple reconciliation from prisoners: in his relationship with God, with Society and with his own self. Also a program of prison pastoral care was proposed at this Congress.

In Rome (1990) the participants called upon the Church to adopt a clear standpoint on the death penalty, underlining the inhumanity of this punishment. It declared that the death penalty was no longer appropriate in a truly democratic and evolved society. It challenged the Episcopal Conferences to stimulate and promote pastoral care for prisoners at national and local level, and the Christian communities to maintain pastoral contact with prisoners, their families, and with the victims of crime. Civil society was urged to social and economic reform, since social injustice was without doubt a crucial factor in crime. Governments were

urged to reform fundamentally their penal code. During the Presidency of Mgr. Curioni (1985-1993) the Commission grew slowly to become more global to almost 40 members.

4. Since 1993: Building Structures

The Plenary is the highest organ of the Commission. Each country (according to the UNO) that is present or represented has the right to vote and to make proposals. The Plenary meeting forms usually just a small part of a Congress, half a day or even less. The rest of the Congress programme consists usually of exchange of regional reports, lectures, and workshops

From 1974 on the ICCPPC has an Executive Board consisting of several persons. The Board members are chosen by the Plenary Assembly. The Board consists of a President, Vice-President and a representative from 5 continents: Africa, North- and South-America, Asia, Europe, and Oceania. The Secretary-General and Treasurer have to cooperate closely to the President and are therefore appointed by the Board. They don't need to be a head chaplain. In 1996 the Board members were still all priests, but in several countries the Episcopal Conferences had already appointed a lay person as the responsible person for prison chaplaincy. Since 1999 lay and religious persons have been chosen or co-opted on the Board.[19]

From the beginning the function of President was most important. He convoked the meetings and corresponded with other organisations. Some Presidents were chosen for a just one period, others played their role during even more than 10 years. In the first decades the President was always a priest, from 2003-2011 Dr. C. Kuhn, the head chaplain of Austria and a lay person, was President.

In 1993 the function of Secretary General was created and Gerard de Wit, former head chaplain of the Netherlands and at that time just retired, was appointed as Secretary General.[20] The Secretariat made it possible that communications were improved and a regular News bulletin was edited. Also the regions became more important as regional meetings were organised. With the Secretariat the ICCPPC became more visible with a permanent address and a (non-paid) person who could be asked to visit the prison chaplaincy in several countries. The conditions for communication and travelling improved in these years and contributed also to make these changes possible. Gerard de Wit was as Secretary

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[19] In the USA was for example Sr. Susan van Baalen responsible for the prison chaplaincy in the federal system of prisons, and so she was recognized by the State.

[20] Gerard de Wit, who was responsible for the Congress in the Netherlands, was not longer the Head Chaplain in the Netherlands. Many members wanted him as new President, but that was not possible according to the Statutes. With the creation of the function of Secretary General he could be 'saved' for the Commission. He was Secretary General until 1999.

General and also Treasurer, and via sponsors made the financial position of the ICCPPC more stable. There were meetings with Non-Governmental Organizations (NGO's), the Executive Board met over a period of more than 10 years twice a year and later once a year. Congresses were held in the Netherlands, Poland and Mexico. In 1999 Gerard de Wit resigned and a new Secretary General, Gerard Loman, a Dutch prison chaplain, was appointed together with Paul Steverink as Treasurer. Paul was also Dutch but had experience in fundraising during his 30 years stay in Africa. The secretariat stayed in the Netherlands.

When a person became a Board Member, it could be wise to ask her or his bishop to be a member of the Episcopal Board. So this was asked to some bishops. Thanks to them the ICCPPC became known at several Episcopal Conferences. Later the idea was that only one Episcopal Advisor would be enough. In 2011 Mgr. Brain from England, who attended always the Congresses and who was very dedicated to prisoners issue, was asked to be Episcopal Advisor.

Thanks to the help of sponsors, it was possible for the representatives of several countries to participate at World Congresses in Mexico, Ireland, Italy (Rome 2007) and Cameroon (Yaoundé 2011).

The representatives of the continents attended the Board meetings and had the task to organize the meetings in their own continent and to assist the head chaplains in their region. During a long time the emphasis was on Europe, where most countries were member, and where several meetings took place, although a lot had to be done after 1989, when the Communist system in the countries in Eastern Europe collapsed: for almost a decade there was a sub-region for Eastern Europe which was very active. In Asia and Oceania for a long period of time there were only a few countries involved. In 2011 the Plenary decided that Oceania and Asia should both become separate regions. In Latin America some countries were CELAM-oriented, in other countries there were only local groups of prison visitors. It was difficult to get them joined and to get a more focused vision. Northern America included just 2 or 3 countries, but the biggest number of prisoners in jail was in the USA.[21] Africa, not the least continent, had a lot of prisoners and the conditions in several countries were very poor. Since 2003 not only the poor prison conditions but also the poverty in the countries has been put on the agenda.[22] A few members under guidance

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[21] Canada, the USA and Mexico together with the Caribbean islands are North America. But according to the division by the Church, Mexico belongs to the South American Episcopal Conference (CELAM) and so do the Caribbean Islands. The USA is one country, but consists of 50 independent states with each of them its own legal system. So a head chaplain for the USA is not possible. Still the country has one vote in the Plenary. A lot of Caribbean countries are very small. The ICCPPC follows the system of the UNO and that means that they all have one vote.

[22] Sarpong, P. (2005). *Poverty, the Bane of Freedom*. Speech in Ireland 2003, cited in

of Sr. Jacky Atabong put Africa in the full picture during the Congress in Cameroon in 2011. More than 20 countries in Africa became members of ICCPPC. The Middle East has been a question for along time: does it belong to Asia or should it be a separate region?

In 2000 the ICCPPC got recognition as NGO in consultative Status at the UNO. During the yearly UN meetings ICCPPC works with other organizations in the field of prison conditions, the last years particularly in the revising process of the Standard Minimum Rules for Prisoners, the so called Mandela Rules.[23]

The main focus is still the improving of the national prison chaplaincy. The Episcopal Conferences in the countries have to play a key role in this field. The aim of the ICCPPC is to assist the respective Episcopal Conferences in organizing and stimulating the prison chaplaincy in their country.

In the preparation for the Congress in 1993 it became clear that the recognition of the Vatican was important. The Executive Board proposed the Plenary to ask for recognition. It was not immediately clear what kind of association was appropriate: a private association of the faithful or a public association of the faithful.[24] Also for canon lawyers was not always clear what would be the best option, and even in the Vatican points of view were different, depending from the congregations involved. All together it took more than 20 years before the recognition came.[25] During this preparation it became clear that the Statutes expired and that soon there was no legal basis anymore according to the civil code of Switzerland. So the Association had to ask for a new legal status. The easiest way was to register in the Netherlands,

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Loman, G. (2005). *A Selection of Texts in Preparation of the Seminar on "Human Rights of Prisoners"*, Rome, p. 12.

23 A working group of NGO's is very active in this field at the meetings in Vienna. For the ICCPPC and UN see the chapter by dr. C. Kuhn, and for the Mandela Rules see appendix.

24 See canon 312-326, *Codex Iuris Canonici* (CIC). There are differences between the two types. For the ICCPPC was the main point that it could speak on behalf of the Church on matters concerning prisoners and prison system. A public association can speak with more authority on the specific items.

25 Several working groups worked on the change of Statutes, with the help of eminent canonists from Spain, Austria and Germany. The competent congregation could have been the Secretariat of State (because ICCPPC is an international organisation), the Congregation for the Bishops (prison chaplaincy belongs to the dioceses' responsibility), the Congregation for the Clergy (prison chaplaincy is pastoral care), or the Pontifical Commission of Justice and Peace (prison chaplaincy is about justice and peace issues). After a long time there came a breakthrough: the competent congregation is now officially the Congregation for the Clergy, the normal consultations however are with the Pontifical Council for Justice and Peace, and for NGO matters (with States or the UNO) the ICCPPC communicates with the Secretariat of State.

where the Secretariat was and the Episcopal Advisor, Mgr. de Kok, was glad to help with all the formalities. In August 1998 the new Statutes were signed, and the name was now officially International Commission of Catholic Prison Chaplaincy (ICCPC). The Plenary could adapt the new Statutes at the next congress, which was planned in 1999. The Executive Board of the Commission invited explicitly all bishop conferences to send a representative to get as much as possible support for a really worldwide organization. The result was that 49 countries were represented in Mexico and contacts were made in more than 100 countries. The expectation was that in 1999 or 2000 the recognition could be realized. But negotiations with the Vatican were not always easy, especially on a few issues. One had to do with the word 'Prison Chaplaincy' in the Statutes. The Vatican wanted to reserve the word chaplain (and chaplaincy) only for priests. For ICCPC this was unacceptable for the simple reason that in fact a big majority of the workers in the prison chaplaincy are lay persons, women and men.[26] The solution was found in the use of the word "Prison Pastoral Care" instead of "Prison Chaplaincy". The second item was, several years later: the 'suggestion' by the Congregation for the Clergy that the head chaplains of all countries should be priests. With the support of the Episcopal Advisor this suggestion was refused, because it is not the Vatican who prescribes what are the competences of a responsible in a country. It is the competence of the Episcopal Conference to appoint a person, lay or clergy.[27] Almost fifteen years after the first start for this recognition and many negotiations later, the recognition finally came. The Congregation of the Clergy published on 13 October 2013 a letter with the recognition of the ICCPPC as a Juridical Person in Canon Law (temporally for 5 years, as usual) and presented to our current President Rev. Brian Gowans. The Commission was then officially erected by the Holy See, with the Congregation of the Clergy as the competent authority.[28] It was more than 60 years after the beginning and 39 years after the foundation.

5. Developments from 1990 – 2000

The discussions in the meetings were not only from the view of the (western) Church. UN documents and especially the Standard Minimum Rules for prisoners got an important place. More and more experts from outside the Church and from other disciplines than theology came as

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[26] During the Congress in Mexico City (1999) this led to an explicit clash. At the closing Mass priests and other responsibles had to be divided to receive the Communion. The big majority of the participants, priests included, refused this separation, left Mass and didn't receive Communion. It took several years to restore relations.

[27] In a meeting at the Vatican this question was discussed. Bishop Brain from England, the episcopal advisor from the ICCPPC, attended that meeting and was of much help for the ICCPPC point of view.

[28] According to canon 312, CIC.

speakers to the Congresses. And, even more important, the life of the Church outside West Europe was now prominently present. The Human Rights were given an important place at the Congresses.

The Congress in the Netherlands recalled the continuous violations of human rights of prisoners, expressed its deep concern for the inhuman conditions in many prisons, and also for the length of time spent on remand by many prisoners - in some cases for more than five or even ten years. Also strongly condemned was the use of the death penalty, which was seen as absolutely incompatible with human rights. The Congress called upon the Holy See and all the Bishops' Conferences to use their authority and influence to change public opinion and to steer governments away from the death penalty.[29] There was an investigation on the violation of human rights in prisons, as seen by head chaplains.[30]

In 1996 the Congress was held in for the first time in Eastern Europe. The Congress members condemned the lack of international standards for the treatment of prisoners and also the prison system itself which often, instead of being just, degenerates into a system of injustice. Many cases of torture and general brutality against prisoners were reported. The Congress members called upon the authorities to implement fully the United Nations Standard Minimum Rules for the Treatment of Prisoners, and to give due regard to the human rights of prisoners. Episcopal Conferences and Religious Congregations were urged to continue all their efforts; the special role of the lay faithful in prison pastoral work was recognized and respected. The statement of the Holy See that the death penalty was "de facto" no longer acceptable in this day and age, and that all efforts which strove for a full abolition of the death penalty should be supported, was warmly welcomed by the Congress members.

In 1999 the Congress took place in Mexico City, for the first time outside Europe. Participants of this Congress discussed the real challenge of violence and delinquency; prisons could be a "structure of sin"; too many prisons were overcrowded instead of consideration being given to alternative constructive ways of justice. They called especially for community based restorative justice and all possible forms of victim-offender reconciliation because prisons have mainly a negative effect, are rarely a deterrent, they dehumanize people and often do not protect society. At the Congress solidarity was also expressed for the prison staff who perform their duty with commitment, whilst again strongly the wide use of the death penalty

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[29] During many years groups within the Catholic Church fought with others against the death penalty. In *Evangelium Vitae* (no. 56) Pope John Paul II condemned the death penalty, as does the Catechism of the Catholic Church (no, 2267). This is again uphold in the address of Pope Francis to the delegates of the international association of penal law in Oct. 2014. (www.vatican.va/content/francesco/en/speeches/2014/october/documents)

[30] See report 8th World Congress International (ICCPPC Netherlands, 1993, pp 50-57)

was condemned: every effort should be made to abolish the death penalty as it was a barbaric way of dealing with human beings. Congress members were reminded of the United Nations Safeguards for the Independence of the Judiciary. The members invited all benevolent people to develop a better and more profound understanding of delinquency and urged society to reject the widespread image of the prisoner as scapegoat.

Since the 1990s there has been also an increase of publications by Executive Board Members on prison chaplaincy in Asia, Africa and Latin America.[31]

6. After 2000

In 1993 ICCPPC applied for an NGO-status at the UN. The Executive Board thought that it was wise to apply for a NGO status, because most of its work was not only Church-based but also on the level of states and international organisations. The best way to become an interlocutor with other partners in the same working field seemed to be as an Association. It took several applications before the NGO-status was granted in 2000. From then on ICCPPC began to explore the field of the United Nations Organization on Drugs and Crime (UNODC) and the field of the Human Rights Commission to see at which place the message and influence of the prison chaplaincy could play a role. The ICCPPC got help from NGO's like Penal Reform International, the club of NGO's in Vienna, and the Holy See Representatives to find its way at the meetings. After a few years of research the best place to work in this field appeared to be Vienna.[32] Members of the ICCPPC representing ICCPPC attend the yearly meetings of the UNODC in Vienna, organize ancillary meetings and give statements, often together with other NGO's.

In 2000, the Jubilee year, Pope John Paul II gave a message to the prisoners. This message was very welcomed by the ICCPPC. Members had contributed to the final document by the input given a few years before, especially to the Pontifical Commission Justice and Peace.[33]

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[31] See for example Diamante, R. (2001). *Against Death Penalty*; Diamante, R. (2005). *Death Penalty: Not Justice That Heals but Kills* Philippines); Ike, O. (1979). *The Fantasy of Human Rights* (Nigeria); Maat, B. van der (2007), *100 Anos de tratiamente de jovenes en conflicto con la Ley en Arequipa*, ICCPPC-OPA (Zeist-Arequipa); Atabong, J. (2007*). Opening New Doors, Pastoral Care in Prison* (Douala, Cameroon).

[32] At the UNODC all about prison circumstances comes together. Moreover, Dr. Christian Kuhn, head chaplain of Austria and former president of ICCPPC, was during some years an observer for the UN and had still many contacts with the NGO-staff in Vienna. In Geneva the ICCPPC did not have such connections and in New York it was also not possible to find a good representation.

[33] See the letter of Pope John Paul II to the prisoners, 2000. www/vatican.va/content/john-paul-ii/en/messagespont_messages/2000/documents/4-jp-ii_mes20000630_jubilprisoners.html

The 11th World Congress for Catholic Pastoral Care in Prisons took place in the Republic of Ireland in 2003. Delegates were present from all five continents, with representatives from 54 different countries. The theme of the congress was "*Prisons of the 3rd Millennium challenge Church, State and Society*".

In the final Declaration was written:

"As most important were the overriding problems of our world, such as poverty, inequality between nations and terrorism discussed:
- Poverty is the root of all evil and the scourge of all freedom. It engenders hunger and disease. In many countries despairing youth become delinquent as a last resort in the name of survival.
- The scandalous daily increase in Inequality between nations generates uncontrolled immigration with its corollary of human misery and suffering, with in certain cases people being sold into slavery.
- A consequence of Terrorism is a growing feeling of insecurity. Repressive, knee jerk reactions by state governments have cost many innocent people their freedom. The detention conditions imposed often do not respect the human rights of those who are detained. We are particularly concerned for the people imprisoned in Guantanamo. In many countries the large increase in prison population due to security concerns is always to the detriment of human dignity.
Secondly, the participants are convinced that all people, whether living in prison or living at home, share the same humanity. All prisons mirror the injustice and the violence of the society, which so often creates them. The poor are always over- represented in prison.
For Christians, prisoners, like all vulnerable people, are the essence of the Church's mission to the world. Our ministry to prisoners is in the name of Christ who came to save the poor, the hungry and the lost.
Prison will always be an unavoidable alternative for people whose violent and dangerous behaviour threatens the life of the community. However serious the crime committed, our faith refuses the reduction of the person to his/her offence. A life sentence without the Hope and Love that Faith can bring rapidly becomes a "death" sentence. Pardon, we believe, though sometimes humanly impossible, will always remain a gift of God's redeeming spirit.
A third issue are the convictions that found our ministry:
- Human Rights are not negotiable. The Church condemns the death penalty plus all forms of torture and inhuman treatment, the imprisonment of children and minors and abusive use of preventive detention.
- A country which doesn't respect Human Rights is a danger for its own citizens. We support all political and legal efforts to overcome the practice of corruption and the abuse of power.

- The freedom to practise one's religion or to receive spiritual assistance is an absolute right of conscience."[34]

In the same year, 2003, was in Europe the Plan for Prison Pastoral Care was presented in Europe. This plan, based on a Spanish plan, had two fundamental characteristics:

a. The word 'Pastoral' doesn't mean that it is only a plan for religious assistance, but it is a plan of integral care for the actual person according to his needs and within the framework of the Human Rights and
b. the word 'Penitentiary' is too small: Prevention and Reintegration belong also to the Prison Pastoral Care Plan.[35]

Justice and Peace was and has been the 'natural liaison' between the Vatican and ICCPPC for many years. Already several times a delegate from Justice and Peace attended the Congress of the ICCPPC. The study secretary of Justice and Peace, Mr. Giorgio Filibeck, had collected all the texts in Vatican Documents on Human Rights, which really has become a sourcebook for NGO's and the Catholic Church itself.[36] Pope John Paul II gave a message during the Jubilee Year 2000, and several Episcopal Conferences published a letter on prisoners.[37] When the ICCPPC became in 2000 an NGO in Consultative Status at the UN, the ties with other NGO's were strengthened. This was welcomed by Justice and Peace. The contacts led to a Study Seminar, organised by the Pontifical Council for Justice and Peace and the ICCPPC together in 2005.[38] At this Seminar experts from worldwide organisations like the United Nations Organisation on Drugs and Crime (UNODC), Penal Reform International (PRI) and the Commission for Prevention of Torture in Europe (CPT) came to Rome to discuss with Vatican experts and members of the ICCPPC on the human rights of prisoners. With this study seminar the ICCPPC presented itself as a party of importance at the executive level of the UNODC. Since this meeting ICCPPC has been attending the yearly meetings of the UNODC and gives statements on the situation in prisons, mostly

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[34] See the final Declaration of the Congress in Ireland 2003 in Loman (2005), pp. 9-10.

[35] See Presentation of the Prison Pastoral Care Plan, based on the message of Pope John-Paul II for the Jubilee in Prisons, (ICCPPC-Europe, Vienna 2003)

[36] Filibeck, G. (1992). *Les droits de l'homme dans l'enseignement de l'Église de Jean XXIII à Jean-Paul II*. Cité du Vatican: Libreria Editrice Vaticana.

[37] The Bishops' Conference of the USA published *Responsibility, Rehabilitation and Restoration* (2000). In Spain the pastoral plan was published under the title (2001) *Grandes lineas de una pastoral penitenciaria* (2001); the Roman Catholic Bishops' Conference of England and Wales (2004) presented *A Place of Redemption* (2004) and the German Bishops' Conference (2006) wrote *Denkt an die Gefangenen, als wäret ihr mitgefangen*.

[38] See Pontifical Council for Justice and Peace and ICCPPC (2005), *Human Rights of prisoners,* Vatican.

together with other NGO's. Also at the big 5-yearly meetings of the UNODC ICCPPC had the possibility to participate actively, and spread documentation on prison chaplaincy.[39] The ICCPPC brought also prisoners to the UNODC, in the form of an exhibition of paintings by prisoners, which were selected from the Art Contest in the Rotunda in Vienna during the yearly meeting of the ICCPPC in 2006.[40] Several art exhibitions were organized in other places worldwide.

The idea was to have the next Congress in the Middle East. This was strongly supported by the Commission of Justice and Peace. The connections in Lebanon were good and the preparations had already started, when by a bomb attack the safety in the country could not be guaranteed and the Congress had to be planned in another country.

So two years later, in 2007, the ICCPPC held her Congress in Rome, since the situation in Lebanon had been too dangerous. In Rome the Congress had as a theme 'Discovering Christ's face in every prisoner' and the inherent dignity of the prisoner was the subject to be discussed. Participants were trained to see the violations of human rights in prisons: inhumane expressions of institutional cruelty had to be rectified by abolishing death penalty, putting an end on torture and observing the UN Standards and Norms in the field of crime prevention and criminal justice. The Congress said in its statement: "The situation in too many prisons is still very bad and we are looking for ways, with legal instruments, to improve the situation and to decrease the number of prisoners." An audience with Pope Benedict XVI made clear that the prisoners had also a face at the centre of the Church. However, the centre of prison chaplaincy is not in the Church, but in the prisons, everywhere on the world. So the next meeting should preferably not be in the centre of the Church but in one of the places where prisoners were at risk and where ICCPPC could be of help to them. This is analogue to the Closing Document from the Church in Latin America[41] which in Aparecida 8.6.5. the prisoners has mentioned as persons who are at risk for human dignity[42] and in which the states are called to create better conditions in the prisons.

The Synod for Africa with the theme *Justice, Peace and Reconciliation* was begun in Rome in 2009. The African representative at the Executive Board at that time, Sr. Jacky Atabong from Cameroon, was invited to

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[39] See speeches at the UN from 2003 on, the DVD on 'Making Standards Work' (2005), brochures like *Prison Chaplains Confronted with Torture* (2007), *Minimum Standard Rules in Europe* (2007), *The Basic Principles on Religion in Prison* (2011).

[40] See ICCPPC, *Art in Prison I* (Vienna 2006) and ICCPPC, *Art in Prison II* (Vienna 2010).

[41] Concluding Document of the CELAM Meeting in Aparecida (2007), no. 8.6.5. CELAM, Bogota 2007

[42] Together with the homeless, the sick, the drug addicts and the migrants. See: Concluding Document of the CELAM Meeting in Aparecida (2007), no. 8.6 Suffering faces that pains us.

attend the meeting and spoke at the Synod about prison chaplaincy. As result we read in the closing document that attention is given to prisoners: "Prisoners are human persons who, despite their crime, deserve to be treated with respect and dignity. They need our care. With this in mind, the Church must provide for pastoral care in prisons, for the material and spiritual welfare of the prisoners. This pastoral activity is a real service that the Church offers to society, and it is one that the state should support for the sake of the common good." [43]

The theme of the African Synod could be more thoroughly explored during the Congress in Yaoundé (Cameroon, 2011) with the theme slightly changed: *Catholic prison ministry working for Justice, Reconciliation and Peace*. More than 130 persons attended this Congress. In the heart of Africa cardinal Turkson, born in Ghana and president of the Pontifical Council of Justice and Peace, spoke about the challenge that the marginalized are the Church. He emphasized in his key note speech at the Congress the importance of reconciliation: reconciliation is necessary for the transition from hostility to peace, from alienation to create community. It's not about giving up rights. Reconciliation is not a substitute for justice, but the right way to restore justice and peace which will be the result. Professor Bruno van der Maat (Peru) emphasized in his speech the importance of the social dimension of the prison ministry. He emphasised also the recognition of human dignity of prisoners, both by themselves and by others. Restorative justice is the only way to move forward as humanity. Bishop Brain (England) emphasized the role of cooperation with other churches, and pointed to the dangers of proselytizing by evangelical groups.

7. Concluding remarks

In this article the complete history of 65 years ICCPPC cannot be presented, and how the future of the 65 years old Association will be, we don't know. But some final remarks should be added.

* In 2011 a new Executive Board was elected. The vitality of the Commission depends in many ways on the Executive Board and the activity of the members of the Board. Some chaplains/countries expect that the Board will do everything.[44] But a Board Member has to do the work besides her/his own job as head chaplain in her/his own country. So it depends from the possibilities they have in their own country that the work can be done fruitfully.
* I think that the cooperation between the countries in the different

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[43] Final document Synod of Africa, *Africa Munus*, no. 83.

[44] Even acquiring the subsidies for individual head chaplains to make it possible to travel to and attend a Congress is by some sometimes seen as a task for the Executive Board.

continents should (and will) be more important in the future. It would be more effective too. For members can meet easily at a continental level and the work and conditions are more common. After the Yaoundé Congress in 2011 there was a training group organized in Kenya and similar groups are planned in other African regions, in South America the southern countries together (called Conosur, the southern crown) are very active, in Asia we see that a lot of countries with even a small number of Christian prisoners are visited by the representative of the continent, Europe starts again after a reorientation.

* The ties with the International Prison Chaplains Organization (IPCA) are good and will grow since IPCA has got an NGO status at the UNO also.[45] Together with IPCA and other NGO's, ICCPPC can have a good input at the UN level. However, a counterpart of head chaplains from other churches and/or religions is still missing.
* On the church front there is more awareness on prisoners and on human dignity. Ties with the Papal Commission on Justice and Peace and with the Congregation for the Clergy will be strengthened.

[45] This happened in 2015.

APPENDIX

Congress	President elected	Secretary General
London 1974	H. van den Bulcke (Belgium)	
Munich 1977	E. Schraven (Netherlands)	
Luzerne 1980	M.P. Mascarello (France)	
Strassbourg 1983	Mgr. D. Atherton (England)	
Madrid 1985	Mgr. C. Curioni (Italy)	
Vienna 1987	Mgr. C. Curioni (Italy)	
Rome 1993	Mgr. C. Curioni (Italy)	Rev. G. de Wit (Netherlands)
Bovendonk 1996	Rev. L. Kosatka (Japan)	Rev. G. de Wit (Netherlands)
Warsaw 1996	Rev. L. Kosatka (Japan)	Rev. G. de Wit (Netherlands)
Mexico City 1999	Mgr. J. Branson (England)	Drs. G. Loman (Netherlands)
Dublin 2003	Dr. C. Kuhn (Austria)	Drs. G. Loman (Netherlands)
Rome 2007	Dr. C. Kuhn (Austria)	Drs. G. Loman (Netherlands)
Yaoundé 2011	Rev. Fr. B. Gowans (Scotland)	Until 2013 Drs. G. Loman (Netherlands) Since 2013 Dr. R. van Eijk (Netherlands)

Chapter 4
ICCPPC as NGO-Observer at the United Nations

Christian Kuhn

The term "non-governmental organization" was first coined in 1945, when the United Nations (UN) was created. The UN, itself an inter-governmental organization, made it possible for certain approved specialized international non-state agencies—i.e., non-governmental organizations—to be awarded observer status at its assemblies and some of its meetings. (Later the term became used more widely. Today, according to the UN, any kind of private organization that is independent from government control can be termed an "NGO", provided it is not-for-profit, non-criminal and not simply an opposition political party).

NGOs are highly diverse groups of organizations engaged in a wide range of activities, and take different forms in different parts of the world. Some may have charitable status, while others may be registered for tax exemption based on recognition of social purposes. Others may be fronts for political, religious or other interest groups. NGOs are able to devote themselves to issues which occur across longer time horizons, such as climate change, malaria prevention or a global ban on landmines. Public surveys reveal that NGOs often enjoy a high degree of public trust.

For over 15 years, ICCPPC has maintained its official observer status as an NGO at the United Nations, and is therefore the official global representative of Catholic Prison Pastoral Care. In addition to that, the official recognition granted to the ICCPPC as a 'Juridical Person' in Canon Law by the Holy See in 2013 means that the ICCPPC is the official representation of Catholic prison ministry not only in the civil society but also in the Church.

It is the merit of the then ICCPPC President Rev. Leonard Kosatka (Japan) and the then ICCPPC Secretary General Rev. Gerard de Wit (Netherlands) that ICCPPC has succeeded to get the observer status granted. To get this status, the Organization has to meet several requirements: The aims and the statutes of the organization have to be in compliance with the aims and the spirit of the United Nations, with regard to the respect of human rights and tolerance, the organization has to prove a longer and global existence, and has to provide evidence on its goals with regard to the cooperation with the UN. A yearly report has to be sent by the NGO to the UN NGO-office.

It was Rev. Kosatka who, for many years, represented ICCPPC at many UN Conferences. The ICCPPC representative to the UN at Vienna, Christian Kuhn (Austria) was also chairperson of the Vienna NGO Alliance on Crime

Prevention and Criminal Justice for over more than 15 years. The Vienna Alliance of NGOs on crime prevention and criminal justice has been working since the establishment of the United Nations crime prevention and criminal justice program in Vienna. Under the umbrella of the Alliance, around 30 NGOs in a consultative status with ECOSOC provide an input to the UN program on matters of interest for the NGOs, such as penal reform projects, promotion of human rights, use and application of UN standards in the field of crime prevention and criminal justice, gender issues, social defence and so on. In good cooperation with the New York NGO-Alliance, the Vienna NGOs contribute to the quinquennial UN congresses on criminal justice by holding the so-called "ancillary meetings". A high priority for the Vienna Alliance, since its beginning, was the elaboration and the use and application of United Nations minimum rules for justice administration. The Alliance was, from the beginning, strongly involved in the elaboration of some of these standards, such as the "Code of Conduct for Law Enforcement Officials" which was drafted at a meeting organized by the Alliance. With their worldwide network, NGOs contribute to the process of monitoring the implementation of standards.

ICCPPC, as an active member of the Alliance, has contributed by written and oral statements, by ancillary meetings at big UN Conferences, by lobbying and due to its excellent contacts to many Government representatives, to the work of the UN in many fields, especially on the standard minimum rules for the treatment of prisoners, on freedom of religion in prisons, on capital punishment and life imprisonment and many others. Special emphasis has been placed, over many years, on the elaboration of alternatives to imprisonment and on restorative justice - with a view to encourage member States to implement to reduce imprisonment at every stage of the criminal justice process. A UN handbook was developed, containing many examples of good practice, to which ICCPPC was able to provide some input.

ICCPPC President and some highly qualified ICCPPC members from Brazil are members of a UN working group on the review of the United Nations Standard Minimum Rules for the Treatment of Prisoners, following a discussion on that issue during the 2010 UN Congress in Bahia, Brazil. ICCPPC was one of the organizations which initiated this review process. This initiative (one of many) shall be taken as an example in order to show the long and sometimes difficult process of achieving substantial results in the international framework where so many players with different priorities are active.

The resolution of the Brazil Crime Congress was, in December 2010, adopted by the UN General Assembly as resolution 65/230 in which the UN Commission on Crime Prevention and Criminal Justice was requested to establish "an open-ended intergovernmental expert group ... to

exchange information on best practices, as well as national legislation and existing international law … with a view to making recommendations to the Commission on next steps." During the review progress with several high-ranked meetings of Government officials (Essex, Buenos Aires, Vienna etc…), it was emphasized that the Standard Minimum Rules for the Treatment of Prisoners (Art. 41 and 42 focuses on the right of prisoners to exercise their religion) are still valid. However, a review was considered appropriate. Several NGOs, among them ICCPPC, argued that while the Standards are still hold value today, in the 60 years since their adoption there have been major developments in human rights and criminal justice, resulting in unacceptable flaws and gaps in a modern set of standards. This was considered problematic given that the Rules are often referred to as a primary source of standard setting. In many countries, the SMR (Standard Minimum Rules) are the only standards available to prisoners regarding their treatment in detention, and in other countries the Rules are used as the "blueprint" for national prison rules. Moreover, the SMR are one of the key frameworks used by national, regional and international monitoring and inspection mechanisms in assessing the treatment of prisoners. It is therefore crucial that this framework is consistent with current standards of human rights and criminal justice. NGOs reiterated throughout the process that any changes must not lower existing standards and advocated for a progressive revision of the Rules. Many of their recommendations were accepted and included in the process.

NGOs are not entitled to officially table draft resolutions for voting in the respective UN bodies. This is the right of the members of the body, i.e. Government representatives. Nevertheless, many substantial initiatives for resolutions came from NGOs. The NGO representatives have to find Government representatives and to convince them to officially table and present the draft. That includes many discussions with Government representatives who often tend to accept the idea of a text but have their own comments on it, provide new input or may disagree on certain formulations. This is what is meant by lobbying: to establish and create trustful contacts, to maintain them and to seek for these contacts. On the other hand, Government representatives often appreciate the professional knowledge of NGO people which they can contribute from their commitment and work in specific areas. Usually, it is the prison chaplain who knows "prison life" from the inside, who can assist in focusing on urgent needs and who can provide ideas on how to improve prison conditions.

ICCPPC always seeks a close cooperation and a coordination of its UN initiatives with the representative of the Holy See to the UN. There is a mutually trustful relation with the Vatican diplomacy.

At the yearly meetings of the relevant "political body" of the UN

on crime and prison issues, the Commission on Crime Prevention and Criminal Justice which regularly meets in April/May at Vienna, ICCPPC has organized so-called Ancillary Meetings", mostly panel discussions to which all delegates are invited. At the session of the Commission in 2015, this ICCPPC meeting focused, under the chairmanship of the current ICCPPC President Rev. Brian Gowans, Scotland, on life imprisonment.

Every 5 years, the UN organizes a worldwide big Congress with more than 2000 delegates, high-ranked Government representatives (Ministers, chiefs of police, justice, and prison administration), experts and NGO-representatives. ICCPPC has always substantially contributed to theses Congresses. Among many other activities (statements, ancillary meetings etc.), two actions shall be mentioned specifically:

- at the 2005 Congress in Bangkok, ICCPPC presented a movie on "Making standards work" to all delegates, and a DVD of the movie was given to all of the 2000 delegates.
- at the 2010 Congress in Salvador de Bahia, Brazil, ICCPPC organized an exhibition of many paintings from prisoners – following the two ICCPPC international art contests for prisoners (with more than 3000 contributions from 60 countries from all 5 continents); at his visit to the exhibition, the Brazilian Secretary of State for Justice was given a painting as a souvenir of his visit. (Another big exhibition, prior to that one in Salvador de Bahia, was organized at the UNODC, Vienna).

A major project was the idea to produce a handbook on "Religion in Prison" and to present it in the framework of the UN. This project was initiated by ICCPPC, but – from the beginning – representatives from other religious denominations were invited to participate in the project. Finally, it was elaborated in cooperation with pastoral workers from the Buddhist, Hindu, Jewish, Muslim, Eastern Orthodox, Protestant, and Roman Catholic faiths. It was reviewed by prison managers and contributions were received from the UN Special Rapporteur on the Freedom of Religion or Belief and two members of the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment. It was revised during the Twelfth United Nations Congress of Crime Prevention and Criminal Justice. Suggestions were received from the Governments of Argentina, Austria, Brazil, Fiji, Italy and Uganda.

The handbook "Religion in Prison" compiles the basic principles on religious freedom and assistance in prisons, as contained in the international documents. It is available today in seven languages and has served and still serves as an important tool for prison pastoral work. Forewords were provided by eminent persons, among them His Eminence Metropolitan Hilarion, Chairman of the Department for External Church Relations, Moscow Patriarchate, His Eminence Cardinal Christoph Schönborn, Archbishop of Vienna, Mme Kiran Bedi, former Director of

Indian Prison Service and Police Advisor to the United Nations, Mr Tony Cameron (Scotland), President of the International Corrections and Prisons Association, and Senior Prosecutor Mrs. Karin Dotter-Schiller (Austria). Five hundred copies of the handbook, which is also available in Russian translation, was given, upon request, to the Russian Orthodox Church, a hundred copies were allocated, upon request, to representatives from Egypt (it was the ICCPPC representative for the Middle East, Rev. Elie Nasr from Lebanon, who has provided the Arabic translation).

At the 2015 Congress in Doha, Qatar, ICCPPC was represented by its former Board member, Prof. Dr. Bruno van der Maat (Peru).

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Prof. Manfred Nowak, was a keynote speaker at the ICCPPC World Congress 2007 in Rome. At that Congress, several prison chaplains from African and Latin American countries reported on facts of torture of which they got knowledge in the prisons where they were working. Immediately after the Congress, ICCPPC started, in cooperation with experts from the UN, to elaborate a handbook which was then issued under the title: "A Guide for Chaplains Confronted with Torture". The handbook was prepared to serve as a guide for chaplains and prison pastoral workers to prevent and combat torture and other inhuman treatment. It offers several strategies how prison chaplains can and should act when they witness cases of torture. The Church and its representatives are bound to act against torture because promoting the dignity of human life is part of the gospel. Furthermore, a passive attitude towards acts of torture could be well interpreted as acquiescence and over time such an attitude legitimises human rights violations as socially acceptable.

The handbook offers analysis on who practises torture, why and when does torture take place in prison, where in prison are the tortured prisoners more likely to be found, and: what is to do. Among these principles on the right acting are chapters on networking, on the principle of subsidiarity, on acting in accordance with legal principles – and it provides different practical guidelines.

A memorandum of understanding was signed between ICCPPC and the Special Rapporteur Prof. Nowak with the aim to strengthen cooperation in the field of human rights protection in prisons. Prison chaplains usually have access to all parts of a prison, have the possibility to speak with all inmates and the staff, and try to maintain trustful relationship also with the prison administration. All this puts them into a crucial and central position with a large inside in prison life. Of course, prison chaplains have to respect confidentiality with regard to the inmates, they have to respect their duty of secrecy, but – at the same time – they feel committed to fight against the abuse of power and the struggle to preserve human rights. It is a permanent challenge for the chaplains to find the right balance between

these two duties. Especially in cases where chaplains become witness of torture, it needs great wisdom, strategic acting and a good network in order to successfully find a way to help protecting prisoners.

Another handbook by ICCPPC, aiming at the dissemination of UN standards in the field of treatment of foreigners in prison, was issued in 2009.

It is a permanent challenge for ICCPPC to find members who, on a voluntary basis, are able and willing to represent ICCPPC at the three main seats of the UN: New York (Headquarter, General Assembly), Geneva (Human Rights Center), Vienna (UNODC: United Nations Center on Drugs and Crime). Nevertheless, the importance of that commitment can hardly be overestimated.

Chapter 5
Prisoners No More But Brothers and Sisters
ICCPPC in Asia

Sebastian Vadakumpadan

1. Introduction

In October, 2015 a lady with two children was sent to the central prison at Bangalore, Karnataka, India. She was arrested for cutting off two of her husband's fingers using a type of spray due to problems in their marriage. She was crying profusely in the prison and asking the prison ministry volunteers to intervene with the husband. Both she and her two children were suffering with their new situation in prison. The volunteers had gone to meet the lady's husband but he was not ready to entertain the volunteers with this issue of his wife. They came back as expected from an angry husband. They continued to pray as the lady was asking them to try once again. Again they approached the husband asking him to come and see the children at least. The following day he came to see the children and a meeting was arranged in the prison for all of them. It was surprising to see the lady going to the husband and asking his pardon. Immediately he embraced his kneeling wife. After a few days he came to the prison and took the children out and later, through the courts arranged for his wife to be released. The volunteers were amazed to see the forgiving husband and how God heard the prayers for this couple. They were deeply grateful to the volunteers.

The work of a volunteer may not seem much, but their role may be asking to show mercy to the victims, visiting a family of the prisoner, arranging an advocate, asking the family members of the prisoner to visit the prison, helping the children of prisoners and even to say a few words to a prisoner to show that he is respected and loved. On 13 March, 2015 Pope Francis made an astonishing proclamation: "I have decided to announce an Extraordinary Jubilee which has at its centre the mercy of God. It will be a Holy Year of Mercy." On 1 September 2015 Pope Francis wrote to Archbishop Rino Fisichella, President of Pontifical Council for the Promotion of New Evangelization giving the details of the opening of the Holy Doors in the Jubilee Year. This letter profoundly manifests his deep love and care for the incarcerated, whose freedom is limited. He writes that the imprisoned may obtain the indulgence in the chapel of the prisons. "May they all be touched in a tangible way by the mercy of the Father who wants to be close to those who have the greatest need of His forgiveness.

They may obtain the indulgence in the chapels of the prisons. May the gesture of directing their thought and prayers to the Father each time they cross the threshold of their cell signify for them their passage through the Holy Door, because the mercy of God is able to transform hearts, and is also able to transform the bars into an experience of freedom." The Jubilee year of Mercy is a real opportunity for the Prison Ministry to concretely convey the mercy of Father to those behind the bars. All the bishops may take a chance to enter the prison to open the Holy Doors of Mercy for the prisoners at an appropriate time.

2. Asian and Middle East countries and prisons

More than 10.2 million people are held in penal institutions throughout the world according to the latest edition of the World Prison Population List.[1] If those reported to be held in 'detention centres' in China and prison camps in North Korea were included in the total list it would be more than 11 million. More than 700,000 women and girls are held in penal institutions throughout the world, according to the third edition of the World Female Imprisonment List. In Asia we have 44 countries including the Middle East countries. The total number of people under confinement is 3,728,422.[2] It is really high time to form an Asian board and work towards a national level coordination of prison ministry in each country. So far Asian countries have not started any type of national coordination of prison activities except some individual attempts to work in some prisons.

2.1 The context of prisoners in Asian and Middle East countries

In many countries of Asia and Middle East a large proportion, sometimes even a majority of people in prisons or jails have not yet been convicted. They may be under investigation, a decision may not have been made about whether their case should go to trial or they may be simply awaiting trial. The slowness of the judicial system and the resultant large numbers of under trial prisoners are major factors in prison overcrowding in Asian region. "Quality of justice suffers not only when an innocent person is punished or a person is exonerated, but when there is enormous delaying in deciding the criminal cases".[3]

Human rights are neither privileges nor gifts given at the whims of the

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1 World Prison Population List (WPPL), researched and compiled by Roy Walmsley and published on Friday 22 November 2013 by the International Centre for Prison Studies. www.prisonstudies.org

2 World Prison Population List (WPPL), researched and compiled by Roy Walmsley and published on Friday 22 November 2013 by the International Centre for Prison Studies. www.prisonstudies.org

3 Govt of India, Ministry of Home Affairs, "Report of the Committee on Reforms of Criminal Justice Systems". (Vol 1, March 2000).

ruler or a government neither can be taken away with arbitrary power. These cannot be denied nor can they be forfeited because an individual committed an offence or broken any law. Prisoner's rights have become an important item in the agenda for prison reforms. This is done essentially by the recognition of two important principles. Firstly, the prisoner "is no longer regarded as an object or any ward or a slave of the state; who the law would leave at the prison entrance and who would be condemned to 'civil death'".[4] Secondly, "the convicted person goes to the prisons as punishment not for punishment".[5] The object of the detention of an accused person is primarily to secure his/ her appearance at the time of trail and is available to receive sentence, in the case of being found guilty. If his/ her presence at the trial could be reasonably ensured other than by his/her arrest by his detention it would be unjust and unfair to deprive the accused of his liberty during pendency of the criminal proceedings.

Overcrowding in the prison makes things worse for all including prison staff, prison managers and for prisoners. Prisons have the responsibility to receive however all those the courts commit to them, to hold the prisoners securely to release them back to the community on the due date. Prisons also have the tasks of providing an inclusive atmosphere which leads to prisoners' resettlement and reduces the likelihood of further involvement in crime.

Who is in prison? Are they filled with serious, violent, organized gangsters and racketeers? Hardly. They are filled with the poor, socially, accused of petit offences and the mentally ill. Remand prisoners form overwhelmingly a large portion of the total prison population. This is also responsible for the pervasive phenomenon of overcrowding of Indian prisons. For example, in India according to records,[6] as on December, 1978, there were 184,169 persons in prisons throughout the country while the number on remand was 101,083 (roughly 55%). The remand population has been increasing over the years. At the same time the total prison population exceeds 31% higher than the capacity[7]. This is the same in all other countries in Asia and the Middle East. Most of the prison population is made up of people who are not guilty at all but are just on remand awaiting their turn in court. Again, most of the remands are people who cannot pay their bail money or who don't have sufficient proof of residence and so

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4 The supreme has made it very clear in many judgments that except for the fact, the compulsions to live in a prison entails by its own force, the deprivation of certain rights, like the right to move freely or to practice a profession of one's choice, a prisoner is otherwise entitled to the basic freedoms guaranteed by the Constitution.

5 Prison sentence has to be carried out as per court's order and no additional punishment can be inflicted by the prison authority without sanction.

6 According to 78th report of the Law Commission as on 1st April, 1977.

7 *Prison Statistics India 2012*, National Crimes Record Bureau, Government of India, http://ncrb.nic.in.

cannot assure the court that they will turn up at the next date of hearing. Often the prisoners cannot attend the court because there are not enough police escorts to bring them back and forth from jail. At other times either one or the other lawyer is absent, witness are unavailable, the magistrate himself is otherwise occupied.

Many studies have found that the majority of the prison population was from rural and agricultural background and that the first offenders were involved in "technical or minor violations of law" and accounted for the large number of prisoners. Many inmates are imprisoned for nonpayment of fines or inability to afford good legal representation. The National Police Commission[8] of India in its report says, "remand prisoners consist of a large variety of persons, hundreds of whom are poorly educated, simple persons caught in the web of the law, unable to comprehend what has happened, what the charges against them are, or why they have been sent to jail. These are the people without a calendar or clock, only a date in a court diary, moving from hearing to hearing. …. there are some of them, charged with ticketless travel…. or some minor infraction of law…." Similarly, the court system is extremely overloaded resulting in the detention of thousands of persons awaiting trial for longer periods than they would receive if they were to be convicted. Disposal of cases in Indian courts is considerably slow. Even in cases involving extremely grave offences with direct impact on public order and national security, there are abnormal delays. There are harrowing tales of innocent citizens languishing in jails as remand prisoners for years.[9] The number of pending cases has increased considerably during these years in all the countries.

It is stated that the number of judges per million population in India and other Asian countries was 10.5 which was the lowest in the world.[10] As of 2009, the ratio of the judge in India is 14 per million population.[11] India has one of the poorest judge population ratios when compared to countries such as Australia (47 per million), UK (50 per million) Canada (75 per million) and USA (107 per million).[12]

The speedy trial of offences is one of the basic objectives of the criminal justice delivery system. From the part of the accused a speedy trial is important because:

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8 The National Police Commission appointed by Government of India produced 8 reports between 1979 and 1981.

9 Media reports stated that Shankar Dayalat an under trial prisoner has spent 44 years in jail (including 43 years in asylum) and his family believed him to be dead. www.nhrc.nic.in.

10 See 120th report of Law commission of India on man power planning: A blue print at p. 317. http://twocircles.net/databank/iudgepopulationratio.retrieved on March 12, 2012.

11 http://twocircles.net/databank/judgepopulationratio.retrieved on March12, 2012.

12 http://ebc-india.com/lawer/article2005.

1) Pre-conviction incarceration is minimized;
2) the worry, anxiety, expenses, disruption to vocation and peace are minimized;
3) undue delay may result in impairment of the ability of the accused to defend himself whether on account of death or disability of the witnesses.

The right to speedy trial is recognized as a common law right flowing from the Magna Carta in UK, USA, Canada and New Zeeland. Article 14 of the International Covenant on Civil and Political Rights, 1966 also speaks about the significance of speedy trials.[13]

Many are denied bail in the pettiest of the cases. Even if the bail is granted in many cases, it is only an illusionary relief since the accused being from among the poorest backgrounds cannot afford to arrange a surety. It is pertinent to note that the court never grants them bail without surety or order their release on their own bond. As a consequence such people are made to languish in prisons for months on end in cases, which do not even deserve a few days detention for the accused.

Imprisonment badly impacts on the families of prisoners as those imprisoned are unable to look after their families. In the absence of the main bread-winner, the family is often forced into destitution with children going astray. This combined with the social stigmatization and ostracization that they face, leads to circumstances propelling children towards delinquency and exploitation by others. It is an inexorable circle. The problems become acute when they belong to the socio-economically marginalized and exploited sections of the society. The dominant class does not fail to loose time in taking advantage of this situation to exploit the remaining family members to the fullest possible extent. This can take the form of rape or forced prostitution of the prisoner's wife and/ or his daughters. It is easy to imagine the great problems this leads to in society.

2.2 Problems of prisons in Asian and Middle East countries

1) Corruption

The prison and prison department is not free from corruption. Since prison is away from the general gaze of the public, we can say that there is a lot of corruption taking place in prison. Money can give a five-star hotel atmosphere in the prison. All the modern gadgets are available in the prison due to corruption. Intoxicants, though strictly prohibited, are also available inside if enough money changes hands.

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[13] Article 14(3) (c) of the International Convent on Civil and Political Rights, 1966 says the accused to be tried without undue delay.

2) Prison violence
Prisons are often dangerous places to some extent for those they hold. Gang violence is also endemic and riots are common. Meek and first time offenders are tortured and made to do all the menial tasks**.**

3) Criminalizing effect of a prison
With hardened criminals being around and in the absence of scientifically proven methods to separate them from others, contamination of first time, circumstantial and young offenders into full-fledged criminals occurs very frequently. It is often quoted that 'Prisons are Universities of Crime where people go in as under-graduates and come out with Ph.Ds. in crime'.

4) Homosexual abuse
Prisons are institutions that lodge people of same sex. Being removed from their natural partners, the prisoners look for alternative ways to satisfy their sexual urge. This often finds vent in homosexual abuses where the young and feeble are targeted. Resistance on the part of prisoners leads to aggravated violence towards them. At times, prisoners are subjected to massive homosexual gang-rapes. Apart from causing severe physical injuries like the rupture of anus and spreading sexually transmitted diseases including HIV / AIDS, it also induces severe trauma in prisoners forcing some of them to commit suicide. If they do not, they carry a lot of anger and frustration within themselves which they take out on the next innocent prisoner who gets admitted.

5) Lack of religious freedom and assistance in prisons
Everyone has the right to freedom of thought, conscience, and religion. This right includes the freedom, either alone or in community with others and in public or private, to manifest his or her religion or belief in teaching, practice, worship, and observance, as well as the freedom to change his religion or belief. States are obliged, under the Covenant, to guarantee religious rights and to provide all necessary means that detainees have the opportunity to practice these rights. These religious faculties are not properly given except on feast days in many of the countries. In the states where religious minorities exist, persons belonging to such minorities shall not be denied the right to profess and practice their own religion. This is not assisted in many of the prisons in Asia and Middle East countries.

6) Health problems
Most of the prisons face problems of overcrowding and shortage of adequate space to lodge prisoners in safe and healthy conditions. In unhealthy conditions, infectious and communicable diseases spread easily. Most of the prisoners found in prisons come from socio-economically

disadvantaged sections of the society where disease, malnutrition and absence of medical services are prevalent.

7) Mentally ill prisoners

Mentally ill prisoners constitute another high percentage of the population, which is largely ignored and forgotten by both the outside world and those inside. But given the nature of the illness and prevailing social attitudes, they form the most hapless victims of human rights violations. Even for a normal person, prolonged incarceration might lead to a mental breakdown, the atmosphere being such.

8) Drug abuse

After Murder, attempted murder and other serious anti-personal offences, people booked under anti-drug laws constitute a substantial percentage of the prison population.[14] Being in prison and cut off from the free world, sees an increased desperation to get the banned substances to satisfy their addiction to drugs. This also increases the danger of fresh prisoners being inducted into drug abuse.

3. ICCPPC in Asian Countries

Prison Pastoral Care is a holistic care given to those involved and affected by crime. This therefore involves the offender, victim and society at large. Being holistic means it involves the bio – psychosocial as well as the spiritual care of the person involved.

Prison pastoral Care therefore involves not only care for the soul that is religious assistance. It involves an integral and holistic care for the actual person. This also includes their rights as human beings. Besides, this care should not only be administered within the walls of the prison, but also before, during and after imprisonment:

- Before: There is a need for crime prevention. This would involve propagating good family life, education, religion and alleviating poverty.
- During: Here is need for providing basic bio- psychosocial and spiritual needs, that is providing basis biological, medical, psychological and social rehabilitative and spiritual care for the inmates.
- After: Providing also basic biological, psycho – socio – economic support as well as spiritual support for ex – inmates.

Thus prison pastoral care includes crime prevention and reintegration. It also includes other areas like pastoral, psycho social, economic and legal aid according to the needs of the individual. This would require the

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[14] In the year 2010, 35% of convicts and undertrials constituted that segment of the prison population that was in under the Narcotic Drugs and Psychotropic Substances Act, 1985. Source: Distribution of Convicts and Remands under various Crime heads in Prison Statistics 2010.

coordinated action of chaplains, pastoral assistants, social workers, jurists, medics, and counselors.

It is our place also to think of victims of crime. These are often forgotten. It is important to help them get reconciled with themselves, to move with them in and through their pain, isolation and help them if possible, to find reconciliation and forgiveness in their hearts for their offenders. This is restorative justice.

Prison Pastoral Care therefore is the action of the church

1. to bring peace, serenity, vitality and the hope of the risen lord to those deprived of freedom;
2. to offer redemption to those who commit crime, to victims of crime and help them take a positive turn in their lives;
3. to do everything to prevent crime;
4. to offer restorative justice which pays attention to the victim, offender and community and offers reconciliation which restores peace;
5. to endeavor to achieve the abolition of those laws which do not respect the dignity and the fundamental rights of human beings;
6. promote restorative justice. It looks at justice in a holistic way and not in a vengeful or retributive manner. Restorative justice is a way of looking at crime, the offender, the victim and the community; it looks at how crime affects them and shows how to foster reconciliation and restore peace.

3.1 Needs

In order to make pastoral care more effective in Asia we need:

1. Collaboration and a support network at a local, national and Asian level
Prison pastoral care needs to be put on the same platform as any other need at the international, national and local level. And as such there is the need for an international body which can coordinate all the activities carried on in the prisons by various church groups and volunteers. To ensure the coordination of prison activity throughout a country, there is a need of a national coordinator and also of diocesan leaders to see the local need of prisoners.

2. Initial and ongoing formation
The incarcerated community is a world within our world. In order to be effective and have maximum impact on the inmates, prison personnel, offender, victims as well as ex-offenders it is necessary that:

- the initial formation should be given to introduce prison pastoral care givers into the milieu. This could be a brief formation or orientation for the national representative body;
- it is also important to form an international body in the Asian and Middle East region and prepare it for taking up and mapping out plans for any international issues. The international body should be the

guiding body to motivate the national and local prison church leaders to be effective in their own locality.

3. Formation of infrastructure in Asian and national level
There is a need for the offices of more effective work; there should be proper recording and monitoring of the issues and these have to be analyzed and then conveyed to the concerned persons and authorities. The offices with proper personnel are required for the systematic approach to issues at the right time and in the right manner.

4. Recognition and support by Church and Government authorities
Prison officials as well as Church leaders need to be reminded that prison pastoral care is not just an activity injected by good hearted Christians to the busy prison schedule, but that it is an activity necessary for the reformation, correction, rehabilitation and support of inmates. Thus it should be commended and allocated enough time, space and support.

5. Generate finances
Prison pastoral care until now has been carried out in most of the places as voluntary work by good hearted Christians or sometimes appointed chaplains without any support from either the government or the church. Prison pastoral care cannot raise income for itself in prison. Thus an Asian and national body can recommend that fund raising activities shall be carried out so as to generate income for this purpose.

6. Information
There is a high level of ignorance amongst prison pastoral workers as well as among the public with respect to the rights of prisoners. Information related to prison pastoral care, crime, criminology and legal procedures, should be made more available, so that they may update their knowledge. This will inevitably lead to self-formation. It is of absolute importance for all prison pastoral care givers to make a plan for their work, keep records of their activities, make reports and commit themselves to forwarding their reports to the desired quarters. These reports are important for those involved in the ministry, for sponsors as well as for personal records and for newsletters.

Objectives and forth coming activities of the Asian ICCPPC Coordination
The *objectives* are
-. to establish, sustain and make functional the National and Asian Bodies of Catholic Prison Pastoral care with appropriate systems, structure and human resources to support the prisoners in the respective countries and
-. to make the respective Catholic Church bodies own them and facilitate them on a regular and effective way.

3.2 Forth coming Activities

1. Assist and support Catholic Prison Pastoral Care at the international level and to awaken and encourage a greater awareness of and sensitivity towards the exercise of Prison Pastoral Care.
The prison pastoral committees at the local, regional, national and international levels have to sensitize the issues affecting the prisoners for the general public and to the notice of the Church at large. Support and concern of the church is an inevitable part and parcel of the effective prison pastoral care.

2. Organize meetings for Prison Pastoral agents and for members of the commission.
Most of Asian countries and Middle East countries are Christian minority countries. This very fact shows the difficulty of coming together. There are a lot of hurdles to be crossed over and things are moving at a slow pace. Another danger often faced by the volunteers and chaplains of these countries is the question of permission to get entry to the prisons. So it is most important to have greater awareness among prison pastoral agents and the members of the commission.

3. Form an Asian Executive body and General body
In order to assist and support a greater awareness and sensitivity about prison pastoral care, the formation of an Asian executive body and general body is very much needed. Such a body may organize ongoing formation courses, study current information and organize meetings for prison pastoral agents at the Asian and national level. An Asian executive body could be formed from the delegates of different countries appointed by the bishops' conference of each country. The Asian Executive body would consist of the president, vice president, a member from six zones, the treasurer and the secretary general. The mandate of the elected members would normally be for three years, adapted to the needs of the Asian general body. The general body would be the highest organ convoked and chaired by the president of the Executive body. The general body would normally be convoked every three years.
As far as the Asian region is considered, the executive body and general body is not yet formed or convened. So it is an urgent need to form these bodies to accelerate the work of prison pastoral care. The formation of international bodies is possible only after the first round of meetings and awareness in individual countries of the Asian and Middle East.

4. Promote Executive body and General body in respective countries to coordinate the Prison Pastoral Care.
To promote the prison pastoral care concerning the human and spiritual development of prisoners in the respective countries the formation of

national executive body and general body is highly essential and a valid need. The national general body consisting of diocesan representatives of all the dioceses will elect a national head chaplain with the national executive members in consultation with the bishops' conference of respective countries. The national head chaplain will be represented in the Asian Region as the national delegate from that country. The national executive body and general body will collaborate in the organization of activities on behalf of prison pastoral care agents and meetings for the exchange of experience on the regional and international level. The national bodies also present and defend issues related to the ministry of prison pastoral care before international and regional organizations, in close collaboration with Delegations or commissions of the Catholic Church, whenever possible. The national bodies present to the bishops' conference the report about the prison pastoral care at the national level. They will take up the initiatives to train the chaplains and volunteers for the prison pastoral care in the country. They will also promote newsletters, data collection, documentation etc.

5. Promote the humanization, revision and reform of the prison system throughout Asia and the Middle East countries.

Prisons are places of incarceration and highly impermeable. The conditions of most of the prisons across the countries are appalling. Inmates are condemned in large numbers. Outside the public eye, heart or mind there is little sympathy for the vulnerability of prisoners or any understanding of the unimaginable depth of their abuse. All kinds of degradation and oppression awaits the prisoner; from routine slaps, kicks and insults to beating and continuous subjugation by the gangs that function inside. Most of those who are nabbed by the police and unable to have themselves bailed are the poor. Those with resources like the big criminals, the smugglers who corrupt politicians, and tax evaders are people who are rarely caught. Thus our institutions penalize not the violators of law but remands or even the innocent.

To the outside world, jails have all the facilities that a human being in his sound mind needs. But a peep inside reveals the sorry story behind the smiling faces. Forget international standards human right activists vouch for, even facilities proposed by legislation is lacking. The prison pastoral care should promote open prisons, video linkage between courts and prisons to avoid unnecessary absence on the court day, a grievance redressal mechanism, provision of telephone facilities, offender reintegration programmes, vocational training, income generating schemes, humanizing the prison conditions, alternatives to imprisonment to avoid the stigma of imprisonment, release of convicts on probation before imprisonment, Judgment review committee, religious freedom, provision of chaplains and more.

6. Organize at the national level a one-day restorative justice seminar for the prison pastoral care agents and for the formation of a national executive body with a delegate to represent Asian region.
No crime can take away or diminish the fact that we are all created in the image and likeness of God. Having seen and judged the situations in Asian countries we are called to act and make a difference for those who suffer most because of the failings of our criminal justice and prison systems. It is painful to say that many countries in our region have not shown much initiative in getting involved in prison pastoral care though there have been individual attempts in some countries which have been diminished after a change of personnel. So conducting a one-day seminar for representatives who can be the future agents of prison pastoral care in the country is concerned serious consideration. This seminar can be conducted by contacting the respective bishops' conference of each country.

7. One-day seminar for the delegates of the countries and its representatives to form an Asian Executive body.
After the initial seminar in all the countries and within one year there will be a need for further evaluation and a one-day seminar for the national delegates to be conducted. In this Asian gathering the Asian Executive body can be formed. It is also important to plan out activities for the future and certain immediate issues can be raised for discussion and an action plan can chalked out. On this gathering one or two international board members can be invited to guide the work of Prison Pastoral Care in the next three years. Finally, the Church shall continue to proclaim to the world, "Rather than demanding more walls, let us build more bridges".

3.3 Results

- A Well clarified and explained National and Asian Bodies of Catholic Prison Pastoral Care with appropriate systems, structure and human resources to support the prisoners in the respective countries will be in place
- Fully designated chaplains are available in all the countries;
- the chaplains will have a clear grasp of their roles and responsibilities;
- they will be supported with a competent team of volunteer to support the prison pastoral ministry;
- the executive bodies and the general body will be formed at the national and Asian level which will be sustainable and functioning regularly;
- the respective national Catholic Church bodies will own them and facilitate them on a regular and effective way;
- there will be regular support provided in terms of finance and human resources by the national church bodies;
- there will be regular interaction and reporting by the prison ministry and the national church bodies.

4. Conclusion

"A nation is known, not by how it treats its highest citizen but how it treats the prisoners. You will never know a nation unless you are in prison. If we want to measure the civilization of a country, visit a prison," (Nelson Mandela). Our ministry is to give the inmates a feeling that the world is not bad and there are still people to care for them and interested in their welfare. Our dealings and activities should make them feel respected and loved. This can bring tremendous transformation in their attitudes and mind-set. Thus let us make a difference and bring about changes in the life of these least, lost and last of our society. Then Jesus, our Master will say on the Last Judgment day: "I was in prison and you visited me" (Mt.25:36).

Chapter 6
La cárcel: reflejo de un sistema que excluye

Javier Ladrón de Guevara

Cuando Dios creó el mundo vio que todo era muy bueno. Ya la creación fue puesta en manos del hombre para dominarla y someterla. Fue entregada para la felicidad del hombre, de todos los hombres. Pero el hombre se abusó del don que recibió y quiso ser señor de todo y de todos, y por esto mató a su hermano.

¿Qué hacemos nosotros con el hombre que mata, que rompe la paz social? y ¿Qué hace Dios?

Leamos el libro del Génesis en el cap. *4, 1:*

El hombre se unió a Eva, su mujer, y ella concibió y dio a luz a Caín. Entonces dijo: "He procreado un varón, con la ayuda del Señor". 2 Más tarde dio a luz a Abel, el hermano de Caín, Abel fue pastor de ovejas y Caín agricultor. 3 Al cabo de un tiempo, Caín presentó como ofrenda al Señor algunos frutos del suelo, 4 mientras que Abel le ofreció las primicias y lo mejor de su rebaño. El Señor miró con agrado a Abel y su ofrenda, 5 pero no miró a Caín ni su ofrenda. Caín se mostró muy resentido y agachó la cabeza. 6 El Señor le dijo: "¿Por qué estás resentido y tienes la cabeza baja? 7 Si obras bien podrás mantenerla erguida; si obras mal, el pecado está agazapado a la puerta y te acecha, pero tú debes dominarlo". 8 Caín dijo a su hermano Abel: "Vamos afuera". Y cuando estuvieron en el campo, se abalanzó sobre su hermano y lo mató. 9 Entonces el Señor preguntó a Caín: "¿Dónde está tu hermano Abel?". "No lo sé", respondió Caín. "¿Acaso yo soy el guardián de mi hermano?". 10 Pero el Señor le replicó: "¿Qué has hecho? ¡Escucha! La sangre de tu hermano grita hacia mí desde el suelo. 11 Por eso maldito seas lejos del suelo que abrió sus fauces para recibir la sangre de tu hermano derramada por ti. 12 Cuando lo cultives, no te dará más su fruto, y andarás por la tierra errante y vagabundo". 13 Caín respondió al Señor: "Mi castigo es demasiado grande para poder sobrellevarlo. 14 Hoy me arrojas lejos del suelo fértil; yo tendré que ocultarme de tu presencia y andar por la tierra errante y vagabundo, y el primero que me salga al paso me matará".

1. El desprecio por la vida

Los encarcelados son tomados, en la sociedad en general, como símbolo del desprecio por la vida humana.

La privación de libertad impuesta a las personas es un castigo que marca, no para defender sino para expulsar, ya que esta privación de

libertad alcanza también el derecho a la igualdad de todos ante la ley y el mismo derecho a la vida.

No debemos identificar delitos y pecados; los primeros responden a la convención social de un listado de acciones que se presume no ayudan al bien común; pecado es cortar la relación con la propuesta del ser supremo y con los hermanos.

Por lo tanto hay delitos que no son pecado, (por ej. lo que hace referencia al cuidado de la propiedad privada). Como así también pecados que no se los considera delitos (entre muchos el aborto, aprobado por la ley civil).

La situación actual de las cárceles y de las personas privadas de libertad se sostiene en base a concepciones dominantes que atraviesan la sociedad, y que justifican el actual estado de cosas. Estemos alertas frente a estas afirmaciones, y no nos dejemos confundir.

La sociedad, de las personas presas, dice:

1.1 Algunos ya nacen así

"El árbol que nace torcido no tiene arreglo, muere torcido". No es apenas un dicho popular, sino también una hipótesis elaborada por el criminólogo italiano César Lombroso (1835-1909). Decía él que, a causa de factores biológicos, algunos ya vienen al mundo como delincuentes en potencia. Para él la naturaleza hereditaria de muchas anomalías atenuaba la culpabilidad del delincuente. Aunque no haya conseguido probar su teoría, hoy totalmente superada en los medios científicos, la idea continúa circulando en varios ambientes, como si hubiera una "predestinación" de algunas personas al crimen.

1.2 Ellos eligieron ese camino

Han sido libres para optar por el "mundo del crimen". Están en la cárcel porque ese es el lugar para quien hace ese tipo de opciones. La gente buena no obra así; supone que todos tenemos las mismas oportunidades.

1.3 Si fueron presos es porque no sirven para vivir en sociedad

El preso estaría "cosechando lo que sembró". No falta incluso quien cite pasajes bíblicos para justificar la violencia sobre los presos. En el fondo, existe una creencia de que el orden establecido en el mundo actual es justo, y cada uno tiene la vida que merece.

1.4 Viven mejor de lo que merecen

En un país donde hay pobrezas generalizadas, no es difícil entender que algunos piensen que el Estado no es tan culpable si la comida de los presos viene en mal estado, si hay hacinamiento, si las condiciones de higiene

de los presidios son inhumanas. Y así, en nombre de los derechos de los "libres" que no son atendidos, las sociedades permanecen indiferentes o hasta piensan que el preso ya tiene "demasiados privilegios".

1.5 El derecho es para quien es derecho

La percepción que el pueblo tiene de los derechos humanos es muy confusa. Con frecuencia personas de origen popular, que tienen sus derechos irrespetados diariamente, en vez de organizarse y cobrar de la sociedad lo que se les debe, dirigen su resentimiento a los llamados "marginales", sintiéndose un tanto "vengadas" cuando estos pierden todos los derechos. Lo mismo ocurre con personas de las clases medias, que también viven asustadas en virtud de la falta de seguridad que debería ser garantizada a todo ciudadano. Dicen, entonces, que el derecho es para quienes andan derecho.

1.6 El criminal es fruto del medio

Por otro lado, hay también de parte de algunos, una actitud que se sitúa en el extremo opuesto, afirmando que el criminal es una simple víctima, un mero producto de la sociedad. Se realiza una asociación mecánica entre la delincuencia y el empobrecimiento de la población. Habría una relación directa de causa-efecto: cuanto más pobre, y por lo tanto, sin justicia, más posibilidades de necesitar robar para comer, y consecuentemente, infringir las leyes establecidas de esta sociedad desigual.

Tal actitud coloca, sin querer, a todos los pobres bajo sospecha. Esa sospecha se comprueba cuando, por ejemplo, se desencadenan acciones policiales violentas en villas miseria y otras zonas donde viven las clases populares, sin que haya ninguna reacción contraria; cuando se torturan impunemente a los pobres en las comisarías, cuando ejecuciones sumarias y matanzas ocurren en las periferias, volviéndose una noticia más en las páginas policiales.

1.7 ¿Quién es culpable de hecho?

Podemos afirmar que la criminalidad no se reduce a una cuestión de economía, aunque está más que probado que, disminuyendo la miseria, disminuye mucho el número de personas envueltas en hechos delictivos. Eso significa que la estructura económica es uno de los factores condicionantes, pero no agota la complejidad del fenómeno de la delincuencia, que incluye aún factores culturales, familiares, psicológicos, morales, etc.

2. ¿Cómo son las prisiones?

Escuchamos en programas de radio y vemos en la televisión a algunos reporteros policiales comentar que la cárcel es hotel de cinco estrellas, que

ahí se tiene casa, comida y ropa limpia, además de otras afirmaciones del género. Pocos han tenido la oportunidad de conocer de cerca una prisión para verificarlo.

2.1 Sobrepoblación

Cuando alguien va preso, es colocado transitoriamente en una comisaría, cuyos alojamientos minúsculos suelen estar superpoblados. Como no hay lugar en los establecimientos penitenciarios, aún ya sentenciado, el preso permanece en esas cárceles, pasando lo transitorio a ser definitivo.

Además del espacio, debe considerarse el deterioro de los edificios. Las precarias condiciones de ventilación e iluminación perjudican la salud y provocan enfermedades. La falta de espacio vital viola otros derechos: el de estudiar y trabajar.

Hasta la arquitectura de las prisiones lleva al preso a no sentirse gente: todo está dispuesto para que no haya ninguna privacidad y se instale un clima de intimidación; el propio edificio hace al preso sentirse humillado y percibir que está totalmente a merced de otros, sin poder reivindicar un mínimo de intimidad. Si una presa o un preso no se comportan según las normas y valores de la "masa", corre hasta riesgo de vida.

2.2 La asistencia establecida por ley

La Ley de Ejecución Penal dispone: "al condenado le serán asegurados todos los derechos no alcanzados por la sentencia". Establece la asistencia básica a ser prestada por el Estado, que corresponden a necesidades humanas fundamentales.

2.3 La asistencia material

Consiste en "la provisión de alimentación, vestimenta e instalaciones sanitarias".

Privado de la libertad, el preso no puede gerenciar su propia vida, ni al menos proveerse de lo necesario para su sobrevivencia. Está bajo la custodia del Estado. La pena restringe el derecho de ir y venir; no consiste en pasar hambre, frío, sufrir malos tratos y vivir en condiciones insalubres.

La carencia de productos básicos favorece la corrupción y funciona como instrumento de poder: habiendo dificultades resulta fácil vender facilidades. Hay familias de presos que tratan de proveerles artículos de higiene y otros. Son frecuentes las historias de extorsión, de desvío de mercadería, remedios y otros objetos, y de amenazas en caso de denuncia. En muchas cárceles falta comida.

2.4 La asistencia educacional

Comprende la instrucción escolar y la formación profesional. El sistema

debería proporcionar escuela para los que nunca estudiaron y a los que no terminaron la escolaridad obligatoria. Hay docentes y aulas en la mayoría de las penitenciarías, pero no en la proporción y forma adecuada a las necesidades e intereses de los alumnos.

Los presos disponen de tiempo para estudiar, pero muchas veces la motivación no existe debido a las frecuentes historias de fracaso escolar. No se realizan acciones para superar esa situación. Y aun cuando se reúnen condiciones y voluntad de estudiar, muchas veces son impedidos por "razones de seguridad y disciplina".

2.5 La asistencia a la salud

De carácter preventivo y curativo, comprende la atención médica, farmacéutica y odontológica.

La asistencia a la salud es precaria. Faltan médicos y remedios. Las mismas enfermedades alcanzan a libres y presos, pero por una serie de factores, la posibilidad de curación es menor en las cárceles. Las dolencias de la piel, por ejemplo, son constantes y no se curan por la imposibilidad de cuidados higiénicos necesarios en ropa y ambientes.

2.6 Enfermedades mentales

Algunos sentenciados ya presentaban disturbios mentales antes de la sentencia, otros enferman en prisión. Los enfermos mentales no reciben sentencia condenatoria por un tiempo determinado, sino que quedan sujetos a "medidas de seguridad", detenidos por cierto período de tratamiento psiquiátrico, al final del cual debe ser evaluada la personalidad del individuo y la cesación –o no- de su peligrosidad. Sin embargo, la atención precaria hace que permanezcan indefinidamente en los manicomios judiciales, ocupando plazas por decenas de años o incluso hasta la muerte. Con eso no se desocupan plazas, y una buena cantidad de enfermos mentales permanecen en penitenciarías comunes.

Mientras tanto, Jesucristo dio su vida para que todos la tengan en abundancia. Nosotros, sus seguidores, nos sentimos comprometidos a defender y a promover la vida siempre y en cualquier lugar, como lo hizo el mismo Dios.

Volvamos al Génesis:

> *15 "Si es así, le dijo el Señor, el que mate a Caín deberá pagarlo siete veces". Y el Señor puso una marca a Caín, para que al encontrarse con él, nadie se atreviera a matarlo. 16 Luego Caín se alejó de la presencia del Señor y fue a vivir a la región de Nod, al este de Edén.*
> *17 Caín se unió a su mujer, y ella concibió y dio a luz a Henoc. Caín fue el fundador de una ciudad, a la que puso el nombre de su hijo Henoc.*

De hecho, somos seres responsables; eso nos humaniza. Sin embargo, somos también, en parte, lo que la sociedad hace de cada uno de nosotros. Nuestra libertad personal no es completamente autónoma, sino que depende de muchos factores, como la educación de la conciencia, el ambiente familiar, la convivencia social, las condiciones de vivienda, alimentación, salud, empleo, instrucción escolar, etc.

La raíz de la palabra Henoc, nombre del hijo de Caín como de la ciudad que él funda, es la misma que educación. Será este el camino de integración, de superación de diferencias de fuerza sostenedora del contrato social.

Por otro lado, la cuestión de saber quién "merece" más (el mito del mérito). Se dice, por ejemplo, que alguien "tiene mérito" porque estudió, tiene muchos diplomas, ejerce un cargo importante. Mientras tanto, quedan "sin mérito" los millares de niños que trabajan desde temprano para ayudar al sustento hasta de los adultos de la casa. Existe también la tendencia de transformar en clasificación moral (buena, mala, perezosa, violenta...) una situación de exclusión social. No se percibe que lo que denominamos "mérito" es, la mayoría de las veces, fruto de condiciones de vida facilitadas desde el comienzo.

No será la educación destinada al estudiar o al saber enciclopédico, sino a poder sacar de adentro lo mejor que el otro tiene.

Qué bueno que nos preguntemos cómo Dios le pregunta a Caín Gn 4, 9 ¿Dónde está tu hermano? Esta es la segunda pregunta que Dios hace después del diálogo con Adán Gn 3, 9 ¿Dónde estás? V. 11 ¿Y quién te dijo que estabas desnudo? ¿Acaso has comido del árbol que yo te prohibí? y Eva, V. 13 ¿Cómo hiciste semejante cosa?

Volvamos a **¿Dónde está tu hermano?**

La sociedad violenta dificulta la percepción de que, para ser titular de un derecho humano, la única exigencia es ser humano. Tampoco se percibe con claridad que cuando se viola el derecho de cualquier persona, la inviolabilidad de la vida humana de todos es puesta en peligro.

Muchas de estas actitudes no alcanzan solo a los presos y las presas; se dirigen también a los niños y niñas de la calle, drogadictos, prostituidos, desempleados, mendigos y a los pobres en general, todos de cierta forma vistos como culpables de la situación en la que se encuentran.

En ciertas personas surge hasta alivio cuando aparece un "justiciero" dispuesto a ejecutar una pena de muerte que no existe en la ley, pero funciona en las manos de algunas "policías particulares". Vibran secretamente cuando "incidentes que escapan al control" eliminan "elementos nocivos" (también en cristianos). Esos sentimientos reflejan el desamparo de una población sin apoyo, sin seguridad, expuesta a la ley del más fuerte, que se acaba convirtiendo en bárbara –también ella- como suele suceder con quien vive en un permanente estado de guerra.

Sigue siendo un enigma para el conocimiento humano explicar los motivos que llevan a personas procedentes del mismo segmento

poblacional, de la misma familia, viviendo aparentemente en las mismas condiciones, a practicar crímenes mientras otros permanecen en la sufrida trayectoria de los trabajadores. ¿Misterio de la libertad humana? El hecho de creer en ese misterio no nos puede eximir de la lucha por la igualdad de oportunidades para todos.

Actualmente se reconoce que el problema no es tanto la pobreza, sino la injusticia social, la inequidad que genera resentimientos y deja a gran parte de la población excluida de beneficios sociales y de las mejores condiciones de vida que va aportando el progreso tecnológico y científico.

El tema de la responsabilidad ineludible que portamos hacia los demás, como familia humana, debería ser desarrollado en todos nuestros programas educativos y fuertemente en nuestros documentos de iglesia.

Cuando Dios creó, creó un mundo sin cárceles, y ante la maldad del hombre no encerró, sino que protegió y educó. ¿Será que nosotros podemos soñar un mundo sin cárceles? donde haciéndonos cargo el uno del otro nos protejamos, y sacando de nuestros corazones lo mejor que tenemos, seamos testigos y presencia del Reino de Dios.

Chapter 7
La Pastoral ¿Penitenciaria?[1] como pastoral de perdón y reconciliación

Jorge García Cuerva

1. Introducción

Vivimos en una sociedad fragmentada; el otro parece no ser mi hermano, sino mi enemigo; decía Jean-Paul Sartre en 1944, en su obra teatral "A puerta cerrada": "*El infierno son los demás*" (en francés, "*L'enfer, c'est les autres*").

Cualquier encuesta nos revela la gran preocupación de la sociedad: la inseguridad. Evidentemente se toma el concepto desde una noción reductiva: se piensa en la seguridad como una mera represión del delito.

Cuando se trata mediáticamente el tema de la inseguridad: ¿Qué es lo que está inseguro? ¿Los bienes y la vida de algunos? ¿O la vida de todos? Aseguramos que dentro de las cárceles no hay ninguna seguridad, ¿o esas vidas no valen?[2]

Desde la Iglesia y la Pastoral Penitenciaria entendemos la seguridad como sinónimo de una mejor calidad de vida, seguridad que todos necesitamos desde que nacemos, seguridad y contención familiar, seguridad en una educación de calidad, en el trabajo estable y bien remunerado, en poder proyectar un futuro, en definitiva seguridad ciudadana[3], para todos los hombres y todo el hombre, en toda su integralidad.

Como Pastoral Penitenciaria concebimos lo ya afirmado en el VI Encuentro latinoamericano y del Caribe en Santo Domingo en 2008: cambiar el modelo social imperante en nuestro continente de exclusión y marginación.[4] Por eso la Pastoral Penitenciaria debe ser una pastoral totalizante y globalizante, que analice la problemática carcelaria dentro de un todo, en el marco de la realidad social mucho más amplia que los muros de las prisiones.[5]

En una concepción reductiva de la seguridad muchos creen que la respuesta y solución a la creciente inseguridad es la cárcel, hija de la

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1 Creemos que debe llamarse, como en la mayoría de los países del mundo, pastoral carcelaria; dado que penitenciaria refiere a la penitencia, y la cárcel es lugar de castigo.

2 Cfr. Ladron de Guevara, J. (2010) *Para ir pensando…*

3 Cfr. Documento de Aparecida, 71, 76, 430.

4 Cfr. Declaración final del VI encuentro de Pastoral Penitenciaria.

5 Ver el concepto de mundo de la carcelación o ámbito de las cárceles o realidad carcelaria en sentido amplio en Lineamientos sobre la Pastoral Penitenciaria, Cono Sur, 2009.

injusticia y fruto del conflicto, en realidad, consecuencia de la suma de conflictos sociales que vivimos.

Precisamente desde la cárcel y desde el conflicto social queremos hacernos eco de un grito desgarrador, profundo y liberador: la reconciliación.[6] Asumimos, una vez más, el desafío de proponer una justicia misericordiosa que vaya más allá de la justicia tradicional de la condena a prisión de determinados pecados que las diversas legislaciones tipifican como delitos.

La radicalidad de la violencia solo se resuelve con la radicalidad del amor redentor. Evangelizar sobre el amor de plena donación, como solución al conflicto, debe ser el eje cultural radical de una nueva sociedad.[7]

2. Partir de la propia experiencia

> *"Doy gracias al que me da la fuerza, a Cristo Jesús, nuestro Señor, por la confianza que tuvo al hacer de mí su encargado. Porque yo fui en un comienzo un opositor, un perseguidor y un violento. Pero él me perdonó porque obraba de buena fe cuando me negaba a creer, y la gracia de nuestro Señor vino sobre mí muy abundante junto con la fe y el amor cristiano.*
> *Esto es muy cierto, y todos lo pueden creer, que Cristo Jesús vino al mundo para salvar a los pecadores, de los cuales soy yo el primero.*
> *Por esa razón fui perdonado, para que en mí se manifestara en primer lugar toda la generosidad de Cristo Jesús, y fuera así un ejemplo para todos los que han de creer en él y llegar a la vida eterna. Al Rey de los siglos, al Dios único que vive más allá del tiempo y de lo que se ve, honor y gloria por los siglos de los siglos. Amén"*[8]

La experiencia del apóstol es la nuestra en distintos momentos de la vida; experimentar la alegría de ser perdonados, la liberación de sentir que se nos da otra oportunidad, de que no somos condenados, ni se nos refriega nuestro pecado.

El misterio del perdón es precisamente eso, un misterio. Razones meramente humanas para rechazar, condenar y castigar hay muchas y todas ellas entendibles; por eso el escándalo del perdón que va más allá, que es gracia, que sin olvidar, ama.

Pero para poder perdonar hay que estar de pie, hay que estar preparado para algo tan grandioso; hay que hacer un proceso que lleve a perdonar conectándose con la vulnerabilidad del ofensor.

Cualquier persona puede recorrer su historia, sus momentos de conflicto y pecado; ¿Qué nos sanó?, ¿Qué nos hizo bien?; ¿Qué nos liberó de

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6 Ver 2 Cor 5, 18-20.
7 Cfr. Aparecida, 543.
8 1 Tim 1, 12-17.

nuestras culpas?; más allá de nuestras creencias o ideologías, cualquier ser humano reconoce en su interior la extraordinaria experiencia del perdón como regalo en momentos en que ninguna otra cosa nos hace bien, en que nada nos conforma o nos devuelve la paz.

3. Jesús Reconciliador

Jesús anuncia y revela con su palabra y su vida el amor de un Dios reconciliador. Sus parábolas sobre la misericordia divina, el ofrecimiento de su perdón gratuito a los pecadores, su misión de sanidad con enfermos y marginados; todo nos habla del anhelo de Jesús: reconciliar a los hombres consigo mismo, entre ellos, y con Dios.

Las actitudes de Jesús frente a la oposición, al rechazo y la agresión nunca son violentas o cargadas de odio, sino que son actitudes de mansedumbre, de perdón, de amistad;[9] respondió al mal con bien.

Toda su vida nos habla del Padre misericordioso que está esperando nuestro regreso, que no tiene en cuenta los hechos cometidos, que ofrece gratuitamente su perdón porque nos ama con locura. Al regresar a los brazos del Padre somos restablecidos en nuestra dignidad, somos confirmados una vez más en la existencia por Aquél que nos creó y nos vuelve a decir que somos importantes para Él porque somos sus hijos. Y en el colmo de su gratuidad y amor, hace una fiesta, porque la alegría del perdón merece ser celebrada.[10]

Pero precisamente porque busca una reconciliación verdadera y radical entre todos y no una falsa paz y una tranquilidad aparente, Jesús se esfuerza por erradicar las causas y el pecado que alimentan el enfrentamiento y rompen la fraternidad. Por eso se enfrenta con los defensores de tradiciones humanas que desvirtúan la ayuda de los necesitados (Mt 7, 8-13); condena el abismo que separa a los ricos de los más pobres (Lc 6, 20-26; 16, 19-31); denuncia el mal uso de la Ley que se pone por encima de la persona (Lc 6, 1 y ss). De esta manera, Jesús el reconciliador se convierte en fuente de conflicto, su búsqueda de una sociedad más reconciliada provoca la reacción violenta y agresiva contra Él que lo llevará a la muerte en cruz.

4. La misión reconciliadora de la Pastoral Penitenciaria (PP)

Hoy la misión de la PP es la de Jesús: denunciar las causas más profundas del enfrentamiento entre los hombres, de los abismos existentes en nuestra sociedad que excluyen todo intento de fraternidad (cfr. Lc 16, 26); y anunciar con más fuerza el amor de Dios como Padre y Madre que nos hace hermanos con gestos concretos de perdón, de presencia, presentando el Evangelio como Ley Suprema, por encima de todo código, por encima de toda justicia

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[9] Mt. 26, 50; Lc, 22, 61; 23, 43.

[10] Cfr. Lc, 15, 11 y ss.

humana y tribunal que sólo aumentan el rencor, la fragmentación y el dolor provocado por las ofensas hasta transformarlo en odio.

Los seguidores de Jesús, los discípulos misioneros del perdón, seremos signos de contradicción en un mundo que sigue proponiendo la cárcel como solución a la violencia social, y que cree que la reconciliación entre los hombres es imposible.

Nos decía el Papa Benedicto XVI:

> "*No hay duda de que las condiciones para establecer una paz verdadera son la restauración de la justicia, la reconciliación y el perdón. De esta toma de conciencia, nace la voluntad de transformar también las estructuras injustas para establecer respeto de la dignidad del hombre creado a imagen y semejanza de Dios…Como he tenido ocasión de afirmar, la Iglesia no tiene como tarea propia emprender una batalla política, sin embargo, tampoco puede ni debe quedarse al margen de la lucha por la justicia".*[11]

5. Algunos pasos a dar:

a. Como PP, reconocer los conflictos

Ante todo es necesario afrontar las situaciones conflictivas con verdad. Tener el valor de reconocer y denunciar los conflictos llamando a las cosas por su nombre, desenmascarar situaciones de falsa paz, contribuir a que las injusticias y conflictos latentes se hagan más patentes en la conciencia de la sociedad. Es un ejercicio profético absolutamente necesario para promover la reconciliación.[12]

Plantear fuertemente que la presencia del preso desnuda un conflicto, una persona presa deja al desnudo un conflicto social ya instalado, no resuelto y que además lo precede (exclusión, marginación, pobreza, etc), y donde los posibles caminos han sido obturados por la presencia abrupta de la cárcel. Ella no resuelve el conflicto social instalado, sino que profundiza, reproduce y multiplica el conflicto. De esta forma no satisface las necesidades sociales, transformándose así en un *pseudo satisfactor,* o peor aún, en un *satisfactor destructor*.[13]

La cárcel se transforma en algo contradictorio: su existencia y multiplicación se hace con la intención de satisfacer demandas sociales como la seguridad y la disminución de los índices delictivos; sin embargo, genera efectos colaterales que profundizan la problemática relacionados con la educación, la salud, el trabajo; profundizando el modelo social de exclusión.[14]

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[11] Aparecida 546.

[12] Cfr. Pagola, J.L., *La Reconciliación, misión de la Iglesia.*

[13] Cfr. Max Neff, M. y otros, (1986) *Desarrollo a Escala Humana*, Santiago de Chile.

[14] Cfr. Leguizamón, F., *Pastoral Penitenciaria como Pastoral de Reconciiación.*

b. Como PP, denunciar el pecado

En la raíz del conflicto social de exclusión y marginación que desemboca en la existencia de la cárcel, se encuentra el pecado y la injusticia.

Dice Pagola: *"Ese pecado, lejos de humanizar los conflictos y de conducir hacia una mayor reconciliación en la verdad y la justicia, actúa como fuerza deshumanizadora que es necesario denunciar y erradicar. Por ello, es tarea ineludible de la Iglesia y de los creyentes detectar y denunciar la presencia del pecado, tanto en los conflictos internos de la Iglesia como en los conflictos de la sociedad en general*".[15]

¿Qué pecados podemos encontrar en la raíz del conflicto de la cárcel?

Sin lugar a dudas, coincidiremos en decir que la injusticia social, el sistema imperante de exclusión, la falta de oportunidades, la discriminación, el egoísmo, la corrupción; en definitiva, una globalización sin solidaridad que sigue la dinámica de concentración de poder y de riquezas en manos de pocos que produce la exclusión de grandes sectores sociales, que son sobrantes y desechables.[16]

Hacer este análisis resultará extraño; precisamente la cárcel existe a fin de, ilusamente, encerrar el mal, para que los delincuentes queden adentro; nosotros como PP pretendemos un análisis más profundo que nos lleve a reconocernos como una sociedad enferma que encierra a algunos, a los más vulnerables al sistema, sin hacerse cargo de estas bases de pecado que sostienen la cárcel desde afuera y que se acrecientan hacia adentro de los muros donde se genera un sistema profundamente anti humano.

En el imaginario colectivo, los delincuentes deben estar encerrados; pero este análisis es erróneo: nos reconocemos como hermanos, pero también como pecadores, en una sociedad que tipifica en los códigos penales de nuestros países algunos pecados y los llama delitos.

Por otro lado, el sistema penal sólo capta un porcentaje mínimo de "delincuentes", los más vulnerables, los más débiles. Decía Monseñor Oscar Romero, obispo de El Salvador: *La justicia es como las serpientes, sólo muerde a los descalzos…*

c. Como PP, aportar a la humanización

Quizás este sea el mayor desafío; cómo humanizar un sistema de muerte que no tiene ni siquiera rasgos humanos.

No podremos salir del diagnóstico del sistema carcelario y el modelo social de exclusión si no comenzamos a buscar rasgos de humanidad y de Dios donde parece que no hay.

Es como buscar la punta del ovillo.

Por ello, queremos trabajar la que damos por llamar *"la espiritualidad de la pregunta":* animarnos en el ámbito de la cárcel, en medio del conflicto

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[15] Pagola, J.L., Op. Cit.

[16] Cfr. Aparecida, p. 62 y 65.

a hacernos la misma pregunta que hizo uno de los ladrones crucificados con Jesús: "¿Eres tú el Cristo? (Lc. 23, 39).

Pregunta que nos debe cuestionar profundamente, llevándonos a desentrañar los rasgos de humanidad y de Dios que se encuentran en el Gólgota, lugar de tortura y de muerte.

La pregunta de aquél hombre resulta ser muy lógica: en ese contexto, ¿puede realmente ser el Hijo de Dios un reo crucificado, insultado, burlado, rechazado?

La cárcel, ¿puede tener algún rasgo humano y divino, puede Dios hablarnos desde allí del mensaje liberador y reconciliador del Reino?

Y allí es donde toda la tarea pastoral y la misión de la PP será rastrear el paso de Dios por la cárcel, descubrir el rostro sufriente de Yavé en cada hermano encarcelado; así lo expresa Isaías 53, 2-3:

"No tenía gracia ni belleza, para que nos fijáramos en él,
ni era simpático para que pudiéramos apreciarlo.
Despreciado y tenido como la basura de los hombres,
hombre de dolores y familiarizado con el sufrimiento,
semejante a aquellos a los que se les vuelve la cara,
estaba despreciado y no hemos hecho caso de él".

Humanizar el sistema; rastrear los signos del Reino, pequeños, frágiles, pero con la fuerza de Dios en su interior; porque el reino avanza, sencillamente y de a pie, pero avanza.

La pedagogía de Dios a lo largo de la Historia de la Salvación ha sido la de estar presente en lugares que de por sí son de dolor, de muerte, inhumanos y por eso no divinos.[17]

El pueblo judío: pueblo pequeño, insignificante, perseguido y dividido; el pesebre: lugar de animales; el Gólgota: lugar de tortura, sangre y muerte; el sepulcro, depósito de cadáveres que huelen mal; sin embargo, en todos estos espacios está Dios, detrás del sufrimiento y el dolor, está el Dios de la vida; todos ellos son sacramentos de Dios; signos de la presencia liberadora del Dios de la Vida.

Del mismo modo la cárcel: en el contexto de marginación, encierro, tortura y violencia que ella implica, estamos llamados a hacernos la pregunta del reo crucificado junto con Jesús; a buscarlo denodadamente entre las rejas, sabiendo que Él está[18], y que desde su presencia, podremos descubrir y alimentar signos de humanidad, de paz, de perdón.

Por otro lado, la pregunta del ladrón genera la reacción del otro crucificado, lo impulsa a ver a Dios en el hombre que está muriendo a su

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[17] Para este tema ver García Cuerva, J.; Ladrón de Guevara, J. (2008) *La misión de la PP en el contexto de la Misión Continental,* Buenos Aires.

[18] Cfr Mt 25, 36.

lado; lo anima a humanizar con su clamor ese terrible momento y lugar.[19] Jorge Luis Borges, escritor argentino, lo expresa poéticamente así:[20]

Lucas, XXIII
Gentil o hebreo o simplemente un hombre
cuya cara en el tiempo se ha perdido;
ya no rescataremos del olvido
las silenciosas letras de su nombre.

Supo de la clemencia lo que puede
saber un bandolero que Judea
clava a una cruz. Del tiempo que antecede
nada alcanzamos hoy. En su tarea

última de morir crucificado
oyó, entre los escarnios de la gente,
que el que estaba muriéndose a su lado
era Dios y le dijo ciegamente:

Acuérdate de mí cuando vinieres
a tu reino, y la voz inconcebible
que un día juzgará a todos los seres
le prometió desde la Cruz terrible

el Paraíso. Nada más dijeron
hasta que vino el fin, pero la historia
no dejará que muera la memoria
de aquella tarde en que los dos murieron.

Oh amigos, la inocencia de este amigo
de Jesucristo, ese candor que hizo
que pidiera y ganara el Paraíso
desde las ignominias del castigo,

era el que tantas veces al pecado
lo arrojó y al azar ensangrentado.

Por allí va nuestra misión, como ese ladrón crucificado, reconocer en la cárcel y en los encarcelados la presencia de Dios, que hace de ellos verdaderos sacramentos y desde allí forjar el perdón, como lo hizo Jesús prometiéndole el Paraíso.[21]

d. Como PP, reconstruir la fraternidad desde el diálogo:
Días pasados, una señora argentina abuela de un adolescente secuestrado y asesinado, reclamaba en los medios de comunicación la necesidad de

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19 Cfr Lc 23, 40-43.
20 Borges, J. L., en *El hacedor* (1960) Buenos Aires.
21 Cfr. Lc 23, 43.

encontrarse con los autores de tan terrible hecho; mirarlos a la cara y preguntarles "¿por qué?",en definitiva, ella necesita del diálogo, más allá del dolor, del rencor, de la tristeza.

Curiosamente la justicia tradicional, justicia retributiva, aleja toda posibilidad de encuentro, las llamadas víctimas no son más que espectadores en el proceso.

Es fundamental profundizar en la participación democrática de sectores tradicionalmente excluidos del diálogo (los propios encarcelados, los familiares, los ofendidos, las entidades del tejido social barrial y comunitario, etc). Hay que comenzar entendiendo que la pena privativa de libertad no debiera privar de palabra y participación social.

La PP está llamada a reestablecer los lazos de fraternidad en una sociedad fragmentada, dividida, enfrentada. Misión difícil, pero sanadora: por eso la necesidad de fomentar el diálogo, una "cultura del diálogo"[22], que favorezca el encuentro, el reconocernos como hermanos y no como enemigos.

Vemos la necesidad de romper con el esquema víctima-victimario, planteo vertical que deriva exclusivamente del delito; optamos por la categoría del Padre Nuestro, ofensor-ofendidos, planteo horizontal que deriva del pecado, cosa que todos experimentamos, sufrimos y necesitamos de perdón.

El diálogo y la fraternidad no sólo debemos fomentarlos en las relaciones y casos particulares, sino que debe ser una misión globalizante, que incida en toda la sociedad, en las políticas públicas de nuestros países trabajando en redes con otras organizaciones que ven también la necesidad de un nuevo modo de relación, de resolución de conflictos, que creen en una justicia superadora del encierro carcelario y la condena, que quieren apostar al perdón que sana y a la reconciliación que hermana.

Sin lugar a dudas, esta propuesta no es la más atractiva ni la más deseada en el contexto histórico en que vivimos; con creatividad y audacia, habrá que buscar caminos y alternativas que ayuden a instalar el tema, a ver como opciones ciertas el diálogo, el encuentro fraterno y la convivencia más allá de todo enfrentamiento, rechazo, odio y ansias de venganza.[23]

e. Como PP, promover el perdón "Misericordia quiero y no sacrificios", Mt 9, 13
Cuando no se quiere o no se puede perdonar queda en las personas y en la sociedad una herida mal curada que daña a todos, pues los encadena al pasado. Ese resentimiento instalado en los individuos y en los grupos hace más difícil la lucidez y la capacidad para buscar caminos de convivencia y

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[22] Cfr. Pagola, J.L., Op. Cit.

[23] Recordar el caso Sudáfrica post-apartheid: todo un pueblo que necesitaba reconciliación se anima a nuevos modos de buscar justicia, las audiencias de la Comisión de Verdad y Reconciliación.

bloquea los esfuerzos por caminar hacia la reconciliación.

La cárcel no tiene nada que ver con el proceso de perdón y reconciliación que propone Jesús; en realidad ella favorece el rechazo, la venganza, el desencuentro, la enemistad.

De allí que nos debemos volver a plantear incluso en nombre de la Pastoral Penitenciaria, ¿acaso la cárcel es para hacer penitencia? La Iglesia no va a la cárcel a confesar y absolver a los presos, sino a compartir con ellos la liberación redentora de Jesucristo, anuncio y vivencia que toda la sociedad necesita, pero especialmente ellos por ser parte de los excluidos y desechables del modelo de exclusión que vivimos.[24]

Sí podemos rescatar de la práctica penitencial de la Iglesia primitiva algunas características que pueden ayudarnos en esta idea de proponer una justicia misericordiosa basada en el perdón, el diálogo y la fraternidad.

En los orígenes de la penitencia eclesiástica el punto de partida era el perdón previo de la comunidad; el perdón no brotaba al final; sino que se lo ofrecía desde el principio, como puro regalo de Dios, como factor desencadenante de transformación para los creyentes.

A partir de allí, el penitente asumía su culpa y necesidad de cambio, como consecuencia y expresión concreta del poder transformante de la gracia. Quien se sabe y siente amado de un modo incondicional puede asumir su vida y liberarse superando sus miedos, frustraciones, rencores, heridas, y viviendo de una forma distinta.

El proceso penitencial de la Iglesia era un gesto y compromiso de la comunidad, no era un esfuerzo solitario del penitente; no se lo dejaba encerrado en cárcel, no se lo aislaba de la sociedad "hasta que cambie"; se lo acompañaba, había un compromiso concreto de la Iglesia que se transformaba en lugar de nuevo nacimiento.[25]

Nuestros obispos en Aparecida, reflexionando sobre la Virgen María, rescatan la dimensión materna y actitud acogedora de la Iglesia que la convierte en casa y escuela de comunión.[26]

La cárcel no tiene nada que ver con todo esto; ella es otra cosa, es castigo, es venganza, es exclusión. Ningún juez condena a alguien a la cárcel para que experimente el perdón o se reconcilie con aquella persona a la que ofendió. Nunca la cárcel es escuela de "hombres nuevos."

Desde la PP, compartimos el sueño de Dios: un mundo sin cárceles; pero ello significa no sólo terminar con el sistema carcelario, sino generar una propuesta superadora que, a nuestro entender es la Buena Noticia del perdón y la reconciliación, únicos caminos de liberación y fraternidad.

Por eso apuntamos a trabajar el perdón individual y personal; pero también e incidiendo en políticas públicas, hacer un aprendizaje social

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[24] Cfr. Aparecida, 65.

[25] Cfr. Pikaza, X. (2005) *Dios Preso*, Salamanca, pags. 304 y ss.

[26] Cfr. Aparecida, 272.

del perdón con toda la sociedad, una experiencia colectiva del perdón, de superación de todo odio y enfrentamiento; será un proceso largo y difícil, pero tiene su sustento más importante en Dios que nos perdonó primero.[27]

[27] Cfr. Col 3, 13.

Part II:
Praxis

Chapter 8
Comités de ética en el régimen penitenciario

Michelle Becka

El proyecto "ética en el sistema penitenciario" comenzó con una idea bastante vaga por parte de la pastoral penitenciaria católica en Alemania[1], es decir con la pregunta si posiblemente sería interesante pensar en Comités de ética dentro de la prisión, y creció a ser un proyecto de praxis (ubicado en diferentes prisiones) por un lado y de investigación[2] por otro lado.

La presunción ha sido que sería razonable crear un lugar dentro de la prisión donde profesionales de las diferentes disciplinas se encuentren para pensar y discutir situaciones, las cuales jurídicamente son correctas pero que causan cierta desazón por la intuición que *algo* no esté bien. Muchos que trabajan en la prisión conocen esa experiencia. Por eso ética en la prisión no es tema exclusivo de los agentes pastorales sino debe ser tratado junto con todas las profesiones y jerarquías.

Este pequeño aporte quiere presentar el proyecto de Comités de ética en el régimen penitenciario y explicar su intención y modo de trabajo.

1. Moral y Ética

Ganando más y más publicidad el proyecto a veces provoca prejuicios y miedos – que sean muy vagos o espresen el miedo de crear un gremio que trata de enseñarles a los otros lo que es bueno y malo. Y, a veces las expectativas hacia los comités de ética son muy grandes: como si la existencia de tal institución pudiera impedir prácticas que no se pueden aprobar– y como si pudiera dar respuestas simples en todas las situaciones. Tales miedos y expectativas impliquen, entre otros, una mala comprensión de lo que es ética. Por eso es importante clarificar la noción y distinguir ética y moral.

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1 En el año 2009 se fundó un grupo de trabajo dentro de la pastoral penitenciaria católica de Alemania acompañada por las teólogas (trabajando en el ámbito de la ética social) Hille Haker y Michelle Becka. A comienzos, el trabajo se dedicó sobre todo a la formación en preguntas de ética, más adelante se inició el proyecto de comités de ética en prisiones. El primer comité empezó su trabajo en el 2011 en Bielefeld-Brackwede. Otros siguieron.

2 En el marco del proyecto surgió mi tesis de habilitación. Véase Becka, Michelle (2016). *Strafe und Resozialisierung. Hinführung zu einer Ethik des Justizvollzugs*, Münster. Este aporte resume el capítulo tres de libro.

Moral denomina el conjunto de normas, valores y convicciones válidos en un cierto grupo. Es decir que la moral tiene una fuerza de orientación, para saber lo que es bueno y malo en el actuar cotidiano. Puede ser la moral de un grupo grande o pequeño. Podemos suponer también que haya una moral válida en toda la sociedad. En parte es cierto: debe haber algún consenso respecto a lo debido. Sin embargo, en una sociedad plural hay varias y diferentes convicciones, valores y hasta normas, es decir hay varias morales. Y el consenso necesitado en diferentes áreas hay que renegociarlo una y otra vez. La moral puede cambiar.

La justificación de la moral o la justificación de cambios de la moral la llamamos ética. El proceso de reflexión de la moral, o dicho de otra manera, la reflexión del actuar y de fundar de lo que es bueno o malo, es denominado ética. Ética entonces no ofrece "recetas" listas sino busca maneras cómo actuar y cómo justificar lo actuado. Hay que dar buenas razones, hay que fundar "el porqué". Eso es un aspecto fundamental de la ética. La reflexión ética puede referirse a problemas individuales o estructurales. En la prisión a veces hay una fuerte tensión entre el actuar del individuo y el funcionamiento de la organización. Como vamos a ver más adelante, el Comité de ética lleva un papel importante para tratar adecuadamente esta tensión. Pero antes de eso hay que indicar y debatir tareas y metas de un Comité de ética.

2. Tareas y metas de un Comité de ética

En muchos países existen Comités de ética en hospitales desde hace muchos años, en algunos países existen también en instituciones con atención personalizada, asilos etc. No es el lugar adecuado aquí para tratar los diferentes modos de desarrollo y las formas especiales que existen en aquellos contextos, sino nos reducimos en averiguar la función y el sentido que pueden tener en establecimientos penitenciarios.[3]

Comités de ética generalmente abren un espacio para la reflexión del actuar profesional y de situaciones que parecen difíciles. Aquellas son analizadas y discutidas por un grupo de personas trabajando en los diferentes servicios de la prisión. Los Comités de ética ofrecen el tiempo necesario para que los problemas sean tratados sin la presión de actuar que normalmente caracteriza el trabajo cotidiano. Pueden ser situaciones muy diferentes que son tratadas aquí. Fue discutido por ejemplo la situación de visita de un hijo a su madre. Por la drogadicción de la madre la visita está permitida solamente con la llamada tobillera electrónica. Es una decisión por ley causando, sin embargo, inquietudes en los responsables de manera que surge la cuestión si no hubiera otra solución. También fue discutido

[3] Para una buena introducción sobre los Comités de ética en clínicas e instituciones con atención personalizada véase: Steinkamp, N. & Gordijn, B. (2010). *Ethik in Klinik und Pflegeeinrichtung. Ein Arbeitsbuch*. Köln.

el estado de la ropa que los detenidos tienen que llevar, el tratamiento de personas con particularidades psíquicas y muchos otros problemas surgiendo en el contacto con los detenidos, pero también problemas que surgen dentro del personal como por ejemplo la distribución de servicios impopulares o difíciles.

La discusión del Comité de ética no intenta encontrar una solución pragmática lo más pronto posible sino muy detalladamente se cuestiona: ¿Cuál es el problema y por qué es un problema? Lo que quizás en un comienzo parezca obvio, al comunicarse se muestra difícil, porque hay que expresarlo claramente. Hay que expresar el saber intuitivo. El Comité de ética muestra un compuesto interdisciplinario. La interdisciplinaridad ofrece diferentes perspectivas y abre de esta manera acceso a la complejidad de un conflicto. La discusión comunitaria e intensa muestra muchas veces las implicaciones de un conflicto y sus consecuencias extensas dentro de la realidad de la prisión. Pero no es suficiente constatar la complejidad, hay que distinguir además los diferentes niveles e identificar conflictos centrales y conflictos secundarios. La peculiaridad de la reflexión ética consiste en identificar el problema como conflicto ético: ¿Qué está "en juego"? ¿Qué normas, valores o principios son violados? ¿Corresponde nuestro actuar a lo que debemos realizar y estamos siguiendo el objetivo adecuado? Hay que buscar respuestas a tales preguntas y fundamentarlas. Porque la legitimación ética consiste en poder dar buenas razones. Como justificación de una práctica no es suficiente subrayar que siempre se había hecho de esta manera.

El acceso que ofrece el Comité de ética ayuda a entender a un problema de manera nueva y más profunda, y puede abrir perspectivas inesperadas. Resulta posible pensar lo que antes no se pudo pensar; opciones de actuar se muestran en las cuales antes nadie había pensado y que ni siquiera habían sido perceptibles. A veces no es posible llegar a conclusiones concretas, no se puede indicar opciones para actuar, porque la complejidad de un problema resulta demasiado grande o porque otras opciones implicarían efectos no deseados. Pero eso también es un resultado de una reflexión: entender un conflicto más profundamente es el primer paso para resolver el problema.

Más allá de aquellas consideraciones generales hay que aclarar la meta de la instalación de Comités de ética en prisiones. Para eso conviene tomar en cuenta la definición de meta que propone la American Society for Bioethics and Humanities para Comités de ética en clínicas.[4] Sorprende el paralelismo que existe entre la meta de un Comité de ética en clínicas y

[4] American Society for Biotehics and Humanities (ASBH)(2010). *Core Competencies for Healthcare Ethics Consultation*, Chicago. La definición de la ASBH fue aplicada a la situación del régimen penitenciario, solamente el objetivo fue reemplazado. En el original dice "improve the quality of health care" (ASBH, 2010, 3).

en prisiones aunque las instituciones sean tan diferentes:

> *"Un Comité de ética en la prisión contribuye a una mejor realización del objetivo del régimen penitenciario por medio de la identificación, análisis y solución de preguntas éticas,*
> *- Identificando y analizando incertidumbres y conflictos morales en situaciones concretas;*
> *- Facilitando o posibilitando una solución porque hace posible aportar diferentes perspectivas en un ámbito marcado por el respeto y reconocer intereses, derechos y responsabilidades de todos los participantes."*[5]

El objetivo del régimen penitenciario en Alemania es la resocialización de los detenidos. Dice el art. 2, 1 de la ley penitenciaria (StVollzG): „Im Vollzug der Freiheitsstrafe soll der Gefangene fähig werden, künftig in sozialer Verantwortung ein Leben ohne Straftaten zu führen (Vollzugsziel). Der Vollzug der Freiheitsstrafe dient auch dem Schutz der Allgemeinheit vor weiteren Straftaten."[6] Es decir: "En la realización de la pena privativa de libertad el detenido debe llegar a ser capaz de llevar su vida con responsabilidad social y sin delitos penales. La realización de la pena privativa de libertad también sirve para preservar la seguridad del público de otros delitos penales."

Si esto entonces es el objetivo, la pregunta es, ¿si y cómo se está realizando?. El Comité de ética se dedica a esto. Parte de prácticas concretas y revela por qué estas prácticas impiden una buena realización del objetivo del sistema penitencial. Es decir, se descubre dificultades y por medio de la identificación, el análisis y la solución de preguntas éticas se contribuye a superar las dificultades y así a una realización mejor del llamado objetivo.

Es interesante que la definición de la ASBH habla no solamente de conflictos sino de incertidumbres morales. Es decir que a veces no es

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[5] ASBH (2010), 3.
"The general goal of Healthcare Ethics consultation is to improve the quality of healthcare through the identification, analysis and resolution of ethical questions and concerns. This goal is more likely to be achieved if consultation accomplishes the intermediary goals of helping to identify and analyze the nature of value uncertainty or conflict that underlies the consultation, facilitate resolution of conflicts in a respectful atmosphere with attention to interests, rights and responsibilities of all those involved."

[6] La citación se refiere a la ley penitenciaria de Alemania de 1977. Por la reforma del federalismo en los últimos años los países de Alemania aprobaron nuevas leyes penitenciarias particulares (respectivamente hubo también un conjunto de varios países). Casi todos adquirieron esta frase de 1977, algunos sin embargo modificaron el sentido, lo que no puede ser explicado aquí.

un conflicto concreto sino una inseguridad más imprecisa, y resulta un esfuerzo bastante grande encontrar su origen o entender sus causas.

Con esta definición de la finalidad de un Comité de ética ya entendemos mejor la función que tiene dentro del régimen penitenciario. Hay que averiguar ahora más detalladamente cómo trabaja el Comité de ética.

3. Método y modo de operar

Como ya se mencionó el Comité de ética está compuesto por personas representando las diferentes profesiones que hay dentro de la prisión: psicología, trabajo social, servicio médico, agente de pastoral y, sobre todo, los funcionarios del servicio general. Muchas veces participa también el director. Es una decisión de cada Comité si él participa o no. Si no participa es importante que respalde al trabajo del Comité. Sin el respaldo del director no puede resultar, porque se necesita la disposición de ofrecer tiempo de trabajo y lugar por un lado y defensa y justificación del proyecto hacia el ministerio u otras instituciones por otro lado. Se necesita además una atmosfera que permita la discusión abierta y sin jerarquía y la disposición de los participantes para dedicarse a los fundamentos básicos de la ética.[7] El Comité de ética está disponible para los problemas de todos en la prisión, tanto de los detenidos como de los empleados. No tiene una función de control ni tiene autoridad de decisión sino es deliberativo. Su trabajo tiene que ser comunicado transparentemente.

Como mencionado anteriormente el objeto de la reflexión es un conflicto moral o una incertidumbre moral. En los Comités de ética en clínicas, la reflexión muchas veces es *prospectiva*: en el caso de un conflicto actual que requiere una decisión urgente, el Comité de ética asiste al responsable médico en la decisión. En el sistema penitenciario esta situación no es muy común, aunque es posible. Al lado de esa reflexión prospectiva existe la posibilidad de discutir un caso concreto *retrospectivamente*. En el centro de la discusión se encuentra una situación del pasado que causó la impresión que no fue solucionada satisfactoriamente. Al discutir semejante situación es indispensable concentrarse en el conflicto y no juzgar a personas. Es la regla más importante del Comité de ética: se trata de una reflexión de un conflicto, no se trata de evaluar o juzgar a los agentes. Como en la discusión retrospectiva el peligro de juzgar a personas es grande, preferimos hablar de una discusión *preventiva*. Subraya que se discute un caso del pasado esperando efectos para el futuro, porque la reflexión de este caso va a tener efectos al trato de conflictos similares en el futuro.

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[7] No es el lugar adecuado para dar más informaciones para la realización concreta de un Comité de ética, solamente damos una primera impresión.

¿Cómo entonces se realiza semejante discusión? Para que la discusión tenga un enfoque ético conviene utilizar un manual. Existen varios manuales hechos para Comités de ética en clínicas y también en otras instituciones sociales.[8] Desarrollamos un manual para la reflexión de casos en el régimen penitenciario que se orienta en aquellas.

Consiste en tres partes:

(A) Clarificación de la situación inicial

(B) Entender el problema como conflicto ético

(C) Llegar a un "juico moral"[9]

(A) Para entender el problema es importante conocer bien la situación inicial. Una persona introduce el caso al grupo y lo presenta lo más claramente posible. Después, otras personas pueden añadir otras perspectivas relevantes y se aclaran preguntas. Hay que entender cuáles son las molestías e inquietudes, cómo se muestra el problema y quiénes son los actores y afectados. También la historia anterior tiene relevancia y hay que aclarar dificultades en entender la situación. Conviene también tomar en cuenta prejuicios o experiencias que algunos participantes posiblemente tengan y que pudieran influir en el proceso de discusión. Es importante nombrar esas experiencias personales para poder tratar problemas que surgen aquí. Esta primera parte es dialógica, es importante escuchar las otras perspectivas y tratar de entenderlas. La segunda fase tiene un carácter discursivo.

(B) En la segunda fase hay que encontrar y nombrar la causa de la inquietudes.. ¿Cuál es el conflicto? Es importante entender, hasta qué punto se trata de un conflicto moral y cuáles son los conflictos jurídicos, comunicativos, etc. Se puede distinguir también diferentes niveles, o entre un conflicto central y conflictos secundarios. Tiene gran importancia calificar el problema muy exactamente, para poder seguir aclarándolo. ¿Por qué entonces hay que analizar el conflicto ético? ¿Qué está en juego? ¿Qué principios ofrecen orientación, qué principios, normas, bienes son violados? Hay que encontrar criterios normativos que permiten valorar la práctica que está en discusión. Como indicó el capítulo anterior un criterio importante es el objetivo mismo de la institución, es decir la resocialización. Hay que preguntar si la práctica cuestionable ayuda a la realización del objetivo o lo impide. Además, se entiende mejor el problema si se puede recurrir a las teorías éticas como son por ejemplo la ética del discurso, el imperativo categórico de Kant, el utilitarismo, etc. Ofrecen diferentes accesos y maneras de solución. Esto indica que es importante tener por lo

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[8] P.e. Steinkamp/Gordijn (2010), pp. 255-274.

[9] Es importante subrayar que el juicio moral no es un juicio en sentido jurídico. Se trata del resultado del proceso de discusión en el sentido moral.

menos un fundamento básico de teorías de ética.[10]

Para la estructuración de un conflicto resultó además útil retomar los principios que Beauchamp/Childress introdujeron a la discusión de casos en el contexto de la bioética: autonomía, cuidado (Care), no afectar (neminem laedere) y justicia. [11] A pesar de que hayan sido formulado para las reflexiones bioéticas se mostraron importantes y útiles también en nuestro contexto. Por supuesto que no ofrecen una receta, pero ayudan a entender un conflicto, por ejemplo como conflicto entre autonomía y cuidado.

(C) Para llegar finalmente a un resultado hay que analizar las diferentes alternativas, ver las opciones existentes fijándose bien en la justificación y en las consecuencias. Hay que dar buenas razones y se debe hacer una ponderación de bienes. Al haber entendido las líneas del conflicto ahora se puede decidir qué criterios normativos son justificados y dominantes y cómo se puede aclarar el conflicto por medio de ellos.

El grupo ahora reformula el conflicto y expresa el resultado al que llegó. En la práctica a veces no queda tan claro qué es un resultado. Puede ser que haya una recomendación bastante clara que indique cuál es el conflicto y cómo pudiera ser solucionado. El Comité de ética no está autorizado en dar una instrucción o de actuar por su cuenta para cambiar algo. Puede dar recomendaciones a la dirección, nada más. A veces conviene que la recomendación se limite a indicar un problema y no se ofrece alternativas concretas.

Con formular la decisión termina el proceso de reflexión del Comité de ética. Pero el resultado tiene que ser comunicado dentro de la prisión y en primer lugar al director/la directora. Aunque la realización ya no sea tarea del Comité de ética, hay que garantizar que la recomendación tenga consecuencias. En este sentido el Comité de ética no puede postular que (o de qué manera) sea realizado sino puede reclamar una reacción al respecto.

4. Un instrumento entre ética de la profesión y ética de la organización

El Comité de ética intenta dar orientación en el actuar profesional dentro de una organización. Por eso, unos aspectos de una ética profesional individual con una ética de la organización. Hay que subrayar que la capacidad de reflexión de asuntos morales forma parte de los conceptos actuales de profesionalidad.[12] Aquella competencia tiene que ser

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[10] Por eso consideramos necesario que antes de fundar un Comité de ética en una prisión los posibles participantes lleven un pequeño curso introductorio a la ética.

[11] Véase Beauchamp, T. & Childress, J. (2008). *Principles of Biomedical Ethics*, Oxford.

[12] Por ejemplo la ética es un aspecto importante en la autoconciencia de la "International Federation of Social Work" como también de semejantes asociaciones nacionales.

desarrollada en otros ámbitos, sobre todo en la formación. En algunas profesiones existen códices de ética que pueden dar una orientación en el actuar cotidiano por un lado, y criterios para la reflexión en el Comité de ética por otro lado, porque el actor es exhortado a comprobar si su praxis corresponde a los valores y fines morales expresados en los códices, como por ejemplo respetar la dignidad y la autonomía, la justicia etc. Por esta razón los códices morales pueden ofrecer criterios normativos también para el trabajo de un Comité de ética, pero, como mencionado, existen también otros criterios.

Además, el Comité de ética no se reduce a la reflexión de la praxis de un individuo o de una profesión sino que la reflexión comunitaria traspasa la individualidad. El Comité de ética tiene una relevancia en un sentido de ética de la organización: "la organización de la ética no significa otra cosa que tener cuidado que en la organización los temas éticos y las preguntas morales reciban un lugar comunicativo dentro del sistema en el cual aparecen, y que procesos sean iniciados en los cuales la autorregulación tendrá lugar."[13] Comités de ética pueden ser lugares de comunicación: dan lugar a la reflexión de molestías e inquietudes dentro de la organización y a una reflexión de la cultura misma de la organización, de la manera que tienen efectos en la organización.

5. Relevancia y efectos

Con el trabajo del Comité de ética no se trata de un intercambio sin compromiso, más bien se trata de un asunto central del régimen penitenciario con efectos en la organización misma. Aunque es difícil medir los efectos, se muestra que no solamente crecen las competencias personales de los participantes del Comité sino que influye también en el ambiente de trabajo dentro de la institución. El simple hecho que sea posible expresar inquietudes y descubrir que otros comparten las mismas inquietudes tiene efectos liberatorios en los profesionales. Además, se nota un crecimiento de la sensibilidad frente a situaciones difíciles. Sucede que también fuera del Comité de ética se comienza a cuestionar prácticas cotidianas y reflexionar el actuar propio. Algo comienza a cambiar. Y de esta manera puede mejorarse también la situación de los detenidos.[14]

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[13] Krobath, T. & Heller, A. (2010). *Ethik organisieren*, Freiburg, 32. „Organisation von Ethik heißt hier zunächst nichts anderes, als organisatorisch dafür Sorge zu tragen, dass ethische Themen und moralische Fragen innerhalb jener Systeme, in denen sie auftreten, einen kommunikativen Ort bekommen, Prozesse initiiert werden in denen Selbstregulierung stattfindet."

[14] Por supuesto el Comité de ética no soluciona los problemas profundos del sistema penitenciario. Puede iniciar cambios dentro del sistema y puede indicar en qué medida el sistema no corresponde a su propio objetivo. Pero no reemplaza otras formas de la reflexión crítica del sistema penitenciario.

Es necesario distinguir el trabajo del Comité de ética de la supervisión por un lado, y del desarrollo organizacional por otro lado. La supervisión trata de fortalecer a la persona en su actuar profesional y en sus actitudes profesionales, mientras que el Comité de ética reflexiona sobre una situación concreta, en la cual una inseguridad o un conflicto moral causan una inquietud. En el centro no se encuentra entonces una persona sino un conflicto que ha de ser analizado y discutido de manera discursiva.

El desarrollo organizacional, por otro lado, trata de transformar una organización en general según ciertos fines. Como mencionado el Comité de ética sirve para la realización de la resocialización es decir del objetivo del régimen penitenciario. A pesar de que, en el caso ideal, la finalidad de la organización coincide con el objetivo del régimen penitenciario, el Comité de ética se distingue del desarrollo organizacional porque su reflexión no se dirige a la realización de una meta concreta, sino que mantiene el resultado abierto. El Comité de ética no debe ser instrumentalizado para otros fines ni ser sobrecargado con expectativas y tareas que no son propias de él. Y mientras que el desarrollo organizacional trata de garantizar el funcionamiento perfecto de la organización, el Comité de ética, al plantear preguntas incomodas, a veces disturba los procesos habituales.

6. Comités de ética y el papel de la pastoral penitenciaria

Existe una distinción importante. La idea de los Comités de ética en prisiones surgió en la pastoral penitenciaria católica. Pero las inquietudes y molestiás experimentadas por los agentes pastorales, son compartidas también por los otros que trabajan en la prisión. Para que el proyecto pueda ser realizado y exitoso es sumamente importante que aquellos otros participen. Los Comités de ética no son proyectos pastorales, las discusiones de preguntas éticas no requieren ni fe ni un saber teológico sino la disponibilidad de llevar un discurso de argumentos. En este sentido, los Comités de ética en prisiones no son un proyecto propio de la pastoral penitenciaria y no deben ser presentados como tal.

Por otro lado, el papel que los agentes pastorales juegan en los Comités existentes y la manera como promocionan el proyecto tienen efectos en la autoconciencia de los agentes de la pastoral penitenciaria. Un Comité de ética no puede y no quiere reemplazar actividades pastorales, ni tampoco debe ser confundido con ellas. Más bien añade otra dimensión al actuar de diaconía, porque la reflexión de situaciones irregulares o injustas ayuda a descubrir, qué prácticas aumentan la pena[15] e impiden la resocialización. Es parte de la autoconciencia de la pastoral penitenciaria no reducir al detenido a lo que ha hecho sino seguir viendo en él la persona humana con

[15] Según la ley la privación de la libertad es la pena. Más allá de la privación de la libertad el detenido no debe ser castigado. Pero a veces existen prácticas dentro de la prisión que tienen carácter de castigo. Esas prácticas son ilícitas.

su dignidad propia. El trabajo de análisis y las aclaraciones que elabora el Comité de ética dan un aporte importante en este aspecto. Y puede ser entendido como un paso hacia más justicia en las prisiones. En este sentido se trata de un proyecto que afila también el perfil de la pastoral penitenciaria.

Chapter 9
Volunteer Visitors in Prison
Prison Ministry as a Ministry to the Community

Tobias Brandner

One of the most common reactions visitors express after visiting people in prison is that they have received so much more than they could ever have given, hence the impetus for this essay. While religious rhetoric usually highlights the impact of volunteer visitors on those in prison, the following reflections show that the impact is far from one-sided. Only by additionally understanding the visiting ministry's equally significant effect on the visitors themselves can we gain an appropriate and socially relevant understanding of how this ministry brings healing to the community.

The role of volunteer visitors in prison has received little attention in penal theory. General study books on the penal system and correctional management[1] do not mention volunteers at all, or do so only in passing. Recent discussion about faith-based prisons has drawn social scientists' attention to the relationship between religion and rehabilitation,[2] but this has not yet influenced penal teaching. Besides, the overwhelming focus

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1 See among the many Bartollas, C. & Conrad, J.P. (1992, 2nd edition). *Introduction to Corrections.* Foreword by Simon Dinitz. New York: HarperCollins Publishers; Welch, M. (2011, 3rd edition). *Corrections. A Critical Approach.* Abingdon, Oxon; New York: Routledge, or Gladwin, B.P. & McConnell, C.R. (2014). *The Effective Corrections Manager: Correctional Supervision for the Future.* Burlington, MA: Jones & Bartlett Learning.

2 See for instance the *Journal of Offender Rehabilitation. A Multidisciplinary Journal of Innovation in Research, Services and Programs in Corrections and Criminal Justice* (35, 3/4, 2002) that dedicated a full volume to the topic of religion, the community, and the rehabilitation of criminal offenders; see particularly the article by O'Connor, T.P. & M. Perreyclear, M. (2002), Prison Religion in Action and its Influence on Offender Rehabilitation, pp. 11-33.
Further research into the role of religion in rehabilitation Gartner, J. et al. (1990). *Rehabilitation, Recidivism and Religion. A Systematic Literature Review,* Baltimore, MD: Loyola College in Maryland; Young, M. & others (1995). The Impact of a Volunteer Prison Ministry Program on the Long-Term Recidivism of Federal Inmates. In *Journal of Offender Rehabilitation.* Vol. 22, pp. 97-118; Johnson, B.R., Larson, D.B. & Pitts, T.C. (1997). Religious Programs, Institutional Adjustment, and Recidivism among Former Inmates in Prison Fellowship Programs. In *Justice Quarterly* 14/1 (1997), pp. 10-24; Dammer, H.R. (2002). Religion in corrections. In D. Levinson (ed.) (2002), *The Encyclopedia of Crime and Punishment*. Volume 3 (p. 1375). Thousand Oaks, CA: Sage; Thomas, J. & Zaitzow, B.H. (2006). Conning or Conversion? The Role of Religion in Prison Coping. In *Prison Journal.* Vol. 86/2, pp. 242-259.

of social science is the impact *on inmates*. This essay offers an alternative approach, considering the impact of the visiting ministry not only on inmates, but even more on society as a whole. The essay reviews some findings of social science, but mainly reflects experiences of a practitioner – a chaplain and theological teacher – who has worked with volunteers for over 20 years, first in Switzerland and since 1996 in Hong Kong.

The following discussion addresses a) the pastoral and theological meanings of the volunteer ministry in prison and b) its impact on inmates, on the church outside of prison, and on society as a whole. Two introductory theses summarize the dual form of the visiting ministry, by chaplains and by lay visitors, and how they relate to each other. A third thesis examines the impact of the visiting ministry on people *inside* prison. The core part of the essay, the remaining five theses, analyzes several impacts of the visiting ministry on the world *outside* prison: on the individual believer, on the church as community, on the prison as institution, on society, and on the political realm.

1. The history of care for those in prison has developed in dual form, as chaplain-based ministry and as volunteer-based ministry

From its very origins, Christianity has had a concern both for people in prison and for penal matters in general.[3] The modern history of the prison chaplaincy starts with the prison-reform movement of the 19th century. Chaplains were entrusted with bringing about conversion in prisoners' hearts and with encouraging them on their path of spiritual regeneration. Chaplains became a regular part of prisons in Western Europe, in the United States, and – through the spread of Western judicial and penal ideas especially via the British Commonwealth – in many African, Asian, and Latin American countries. They came to be seen as the staff members most responsible for rehabilitation. Chaplains who are employees of the prison authorities often come from traditional historical denominations – Roman-Catholic, Anglican, Lutheran, Presbyterian, and others. Chaplains serving on an honorary basis often, but not necessarily, come from more free-church traditions.[4]

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[3] A short summary of the history of Christian ministry in prison can be found in Brandner, T. (2014). *Beyond the Walls of Separation. Christian Faith and Ministry in Prison*. Eugene, Oregon: Cascade, pp. 92-99 and 103-105. For further studies on the history of the prison see Morris, N. & Rothman, D.J. (1995). *The Oxford History of the Prison. The Practice of Punishment in Western Society.* New York: Oxford University Press. Most study books on the penal system also include a history of the penal system; see among the many Bartollas and Conrad (1992), pp. 26-108; Hanser, R.D. (2013). *Introduction to Corrections*. Thousand Oaks, CA: SAGE Publications, pp. 1-51.

[4] More information on the history of the chaplain and the chaplain's role in rehabilitation, see Sundt, J.I. et al. (2002). The Role of the Prison Chaplain in

Parallel to the chaplain-based ministry is the equally long history of Christian lay people caring for those in prison. The modern period's lay-based prison ministry has its roots in the revivalist history of the church and in the voluntarist spirit of the 18th- and 19th-century revivals. Two persons deserve particular attention in the development of this volunteer ministry: John Wesley and Elizabeth Fry. Wesley began to regularly visit prisons from August 1730 on, when he was still a student.[5] His ministry included prayers, sermons, Holy Communion, legal advice, provision of medicine and other necessities, and even the payment of debts for people confined for trivial sums of money. He went on to inspire numerous lay people to join his visits. He had a particularly strong impact on John Howard, whose book *The State of the Prison in England and Wales* (1777) triggered the prison-reform movement. Fry, a Quaker, established the *Association for the Improvement of the Female Prisoners* (1817), which inspired numerous ladies' prison associations and female visiting groups. She relied on the warmth of personal contact and the power of Christian faith to bring about transformation among those in prison. Similar to the impact of Wesley on the Prison Reform Movement, Fry moved beyond individual care and influenced senior prison officials to improve prison conditions.

Since then, many volunteer groups have emerged to care for those in prison: The *Salvation Army* (1865), the *Volunteers Prison League* (1896), and others. More recent is *Prison Fellowship International* (1979), which now connects national prison ministries from around 110 countries. Non-religious groups like the *National Association of Official Prison Visitors*, *Prisoners' Friends' Associations*, and various local initiatives have also begun.

2. The two forms of ministry need and enrich each other. Together, they enrich the church and communicate its catholicity

The relationship between chaplains and lay visitors has, at times, been tense. A common point of conflict is what both sides perceive as contrasting commitments to evangelism: some chaplains criticize lay visitors for focusing too heavily on evangelizing inmates, exploiting their relational needs in order to proselytize them and thus failing to offer them holistic care. Indeed, some lay visitors are overzealous or naive about the realities of imprisonment and the real lives of the inmates. Their well-meaning zeal for conversion thus leads visitors toward a predetermined goal that lacks

Rehabilitation. In *Journal of Offender Rehabilitation.* Vol. 35 no. 3-4, pp. 59-86, 61-63; Duce, A.R. (1987). Prison Chaplaincy. In A.V. Campbell (ed.). *A Dictionary of Pastoral Care.* New York: Crossroad, pp. 219.

5 Heitzenrater, R.P. (1978). *Mirror and Memory. Reflections on Early Methodism.* Nashville, Tenn.: Kingswood Books, p. 86 and 96; Tuttle, R.G. (1978). *John Wesley. His Life and Theology.* Grand Rapids: Zondervan Pub. House, p. 118.

sensitivity to inmates' situation. Lay visitors, on the other hand, feeling suspicious about chaplains' more inclusive attitude towards people of other faiths, may regard them as lacking proper evangelistic fervor. Some also find chaplains institutionally tamed.

Some observers regard the gap between chaplains and volunteer lay visitors as a difference of roles and social attitudes. This view sees chaplains as assuming a more socially constructive and stabilizing attitude, and lay visitors by contrast a more compassionate and caring attitude; a similar perspective sees one side or the other as more inclined to prophetic criticism of the penal system. However, a closer look reveals more nuances. Different theological perspectives and attitudes towards people of other faith can be found equally among chaplains and volunteers. Both chaplains and lay visitors choose, in every moment of their ministry, to ally with one social attitude or another.

Yet the two sides have different *gifts* that can be mutually beneficial. On the one hand, the presence of volunteer groups revives the rather solitary ministry of the chaplain and turns it into a community ministry. This cooperation allows chaplains to reach many more inmates than they ever could if left alone. Lay visitors, often more than chaplains, are (besides offering basic spiritual and psychological support) an important resource for inmates during and after their release: they help them maintain their family relationships and connect them with educational and vocational resources during incarceration; and they assist them in rebuilding their lives by introducing job opportunities or by including them in church fellowships after their release. On the other hand, chaplains have a deeper understanding of and a more regular acquaintance with the inmates, from which lay visitors can learn. Chaplains are familiar with prison routines and policies and can make sense of or at least offer possible explanations for what appears (to outsiders) unreasonable and random.

Whatever the case, both sides should humbly acknowledge their dependence on the whole body of Christ. This is usually more challenging for chaplains, who must acknowledge that many lay visitors – without theological education or pastoral training – have excellent abilities to relate to those in prison. Chaplains' generally higher education, their common use of religious terms in conversation, and possibly also their social standing, may alienate inmates from lower levels of society.

3. Volunteers have a tremendous impact on those in prison: They carry something of the normality of social life into prison and also communicate God's forgiveness

How volunteers in prison and how religious programs affect offender rehabilitation is an issue discussed by social scientists (see footnote 2). They consider aspects such as adjustment in prison, recidivism, and post-

release adjustment; and they refer to theories like the *social control theory,*[6] which claims that a person with more links to social institutions is less likely to commit a crime, or the *social learning theory*,[7] which understands criminality at least partly as learned behavior and holds that offenders can learn new behavior. From the perspective of such theories, volunteers' prison visits help offenders establish social relations and find new role models that support their social learning. Empirical studies of inmates' religious involvement generally confirm this positive impact: inmates who participate in religious activities commit fewer in-prison infractions.[8]

However, from a spiritual perspective, offender rehabilitation is more than an adjustment to (often questionable) prison rules or the rules of society. It aims deeper, not just at behavioral change but also at changes in values, in basic attitudes and beliefs. Such changes, difficult to measure, heal past wounds and inspire inmates to deepen and broaden their capacity to give and to receive love. Spiritually transformed people experience growth and a sense of abundant life, and volunteer visitors to prison play an important role for this kind of deeper transformation. Put most simply, they *carry something of the normality of life into the abnormal context of prisons*. They make it possible for inmates to engage with people from outside in thinking about what direction their life should take and what steps to take to get there.

Prison volunteers offer various activities and forms of support, from religious instruction by preaching and teaching to counseling, musical instruction, preparation for re-entry into society, and support in finding work.[9] In some places, governmental rehabilitation services directly rely on the support from volunteers for post-release rehabilitation.[10] In all these activities, volunteers assume different roles – of an elderly friend, of a mother or a father, of a social worker, of an advocate, of a counsellor, and more.[11] It would be impossible for one person, the chaplain, to fill all these

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6 Hirschi, T. (1969). *Causes of Delinquency.* Berkeley: University of California Press.

7 This theory has been used by criminologists like Ronald Akers and Robert Burgess. A central thesis of their theory is that persons become delinquent if they encounter more attitudes supporting delinquency than attitudes opposing and rejecting it.

8 O'Connor, T.P. & Perreyclear, M. (2002), pp. 11-33, including a comprehensive summary of sociological studies on the correlation between inmates' religiosity and in-prison infractions or recidivism (pp. 13-17); further O'Connor, T.P. (2003). *A Sociological and hermeneutical Study of the Influence of Religion on the Rehabilitation of Inmates.* The Catholic University of America.

9 Tewksbury, R. & Collins, S.C. (2005). Prison Chapel Volunteers. In *Federal Probation.* 69/1, pp. 26–30, 28.

10 Kury, H. & Sato, M. (2014). Volunteers in the Probation Service: A Comparison between Germany and Japan. In I. Durnescu & F. McNeill, *Understanding Penal Practice.* Abingdon, Oxon; New York: Routledge, pp. 92-108.

11 See the more extensive reflections about the various roles of prison visitors in Brandner (2014), pp.140-50.

various roles. The presence of volunteers allows spreading the diversity of important roles over different persons.

Some of the roles visitors assume can substitute for real-life people who are out of inmates' reach. For instance, some inmates have little contact with their parents or children. A visitor, then, can assume the role of a father or mother, and allow the inmate to recover a relationship that has withered. Other inmates find it difficult to understand their victims' perspectives and thus cannot empathize with them. This is hardly surprising: since offender-victim reconciliation programs are rare, most offenders are barred from contact with the victims of their crimes and thus have no chance to hear how these victims have been harmed. The visiting ministry can partly compensate for this lack. I have worked with several volunteers who had themselves been crime victims and who, during visits, shared with inmates how they felt. Such encounters help inmates better understand how crime affects people's lives. All these types of communication with volunteers mitigate the loss of relationships that are so necessary for inmates' spiritual, psychological, and behavioral transformation.

Volunteers should note that a visit as such is already 'good news' to the inmates. Explanatory words in form of an explicit Christian message may have their place in specific activities – in worship, in religious instruction, and in response to specific inmate questions – but visitors should trust that their coming, their presence carries a strong message and communicates the core of our faith: that no person, no matter who he or she is and what he or she has done, is too far from God's forgiving grace. The fact that some visitors make an arduous journey or take time out from demanding jobs to meet those in prison is a powerful statement that expresses the value of the men and women in prison. A visit says, before a word is even spoken, that the visited person is valued and precious.

4. As much as the visiting ministry supports spiritual transformation among inmates, it also encourages volunteer visitors in their own spiritual growth and healing

Remember that the starting point of this chapter was that many prison volunteers find visits a humbling experience. They feel that they have received so much more from the interaction than they could ever have given. A student volunteer from China who joined our prison visits in Hong Kong from the beginning of her studies shared how she experienced healing in prison:[12]

[12] Testimony by Cathy Zou, shortened and edited by T.B.

[...] I take the prison visit quite serious since the prisoners are a special group in society. They are under high spiritual tension and they need special respect [...] When I came to visit them for the third time, it was obvious that they had become friendlier with me since they began to sense my sincerity to make friends with them. At this time, I was assigned to share the message with the prisoners during our worship service. I was pretty nervous before I stood up to give the sharing because I thought I could not sufficiently understand the context of the prisoners and I also thought that messages like 'God loves us' or 'God saves us' would be pointless for the prisoners since they were all sentenced to lifelong imprisonment. [...]

[...] one prisoner felt my nervousness, so he encouraged me to relax and told me not to worry. "Just be brave! We will support you." [...] I decided to share my true struggles in my life because I thought that our struggles and our weakness were similar and this could fit the context of the friends in prison. [...]

My story was my testimony of God's salvation. I experienced a serious car accident when I was eleven. The bones in my arms and legs were broken into pieces and I was expected to die soon or, if surviving, to live in a vegetative state. But after several days of coma I woke up with a clear mind and memory. [...] After one month, I could walk again. But I regarded my second life as a curse since I had to endure 45 surgeries and my body is covered with scars. And my family was in a big conflict due to my father's extramarital affairs. When I was twelve years old, I met a Christian who shared the gospel with me saying 'God saves you and loves you'. I was filled with the Holy Spirit and could not help crying. I believed that it is God who saved me. I decided to believe in God. However, since all in my family believe in Buddhism, I was forbidden to go to church. So in my six years of middle school, I did not get in touch with any brothers and sisters and all I could do was pray and read the Bible every day. In the third year of my high school studies, the preparation year for the entrance examination to university, I again underwent a big surgery and left school for one year. Facing pressure from the exam and the worsening situation of my family, I thought that I had been fooled by that Christian and there was no God in reality. So I tried to commit suicide but failed. And I started to return to God and enter the exam without preparation but with faith in God. Finally, it was astonishing that I became the top student and was able to come to Hong Kong to continue my studies with a scholarship [...].

I just shared with them my true struggle in life, my true weakness, and the true salvation of God. After my sharing, one prisoner friend instantly responded to my message and shared with all the audience the story of his weakness and his witness of God's salvation. And later

all the prisoner friends approached me one by one to thank me because I had opened myself to them [...]. They told me that they were also fathers of children and they loved their children. They believed that my father also loved me so I did not need to be so depressed. Actually, I received so much care from them!
When I calmed down, a question came to my mind and I asked myself: 'These people are severe sinners who might have hurt others deeply. Why then should I have friendship with them? I am making friends with people who are extremely hated by the victims and their families!' But in my visiting experience, I could feel that they [...] are not different to us. [...] In my life, there are also people (the family of my father and my father's mistress and their son) whom I extremely hate because they have deeply hurt me and ruined my hope for life again and again. I could not accept that one day they could know God and receive salvation from God. But when I get in touch with these prisoners, my attitude softens. When I feel hatred, which actually happens every day, I feel hurt by others again. I get miserable and hopeless even though everything in my life goes well. [...] But as I met these prisoners who were transformed by the power and love of God, I found things changing. They committed crimes because they had not encountered the true God and true love. When they experience God, they come to repent. The power of love is much more powerful than the power of hatred. The power of God can bring about reconciliation between people! [...] When I saw the change in the prisoners, my depression and hatred in my heart were relieved. [...] I feel that my broken heart is gradually healed by God. It is not because of the repentance of the people who have hurt me. Instead, it is because God changes my mindset towards other people. When we see people through God and through the work of Jesus Christ, hatred is cancelled. I started to pray for the people who have hurt me and began to wish that one-day God will save them. This is the most special way through which God heals me.

The story of this student volunteer about how she experienced her visits to friends in prison sheds some light on the value of such visits for the visitors themselves. Several points from her testimony can be highlighted:

- The context of prison causes visitors to be more exacting and more (self-)critical about Christian platitudes that are commonly used: 'love of God', 'to be set free', 'salvation' and others. What do these terms mean and how can they be expressed and made relevant in a context of utter hopelessness of people with long prison sentences? Inmates are, in my experience, more direct in critically challenging platitudes. This is an opportunity for the rest of us to deepen our understanding of core Christian beliefs and to learn to express ourselves in contextually appropriate ways.

- Volunteers who themselves carry wounds of their past – and who does not? – may experience healing. In the offender, who is unrelated to the volunteers' wounds, volunteers may meet the one who offended them. As they communicate the message of forgiveness to those who did not directly offend them, they learn to extend this forgiveness to those who did offend them. This is a parallel experience to that of inmates (see thesis 3) – when volunteers who have been victims of crime share about their wounds, inmates meet in them their own victims.
- In a society that is so concerned with status and achievement, the encounter with visibly broken lives is for many a relieving and healing experience. It allows volunteers to step back from their own and their society's focus on success. Even though status and achievement also play a huge role in prison – in form of internal hierarchies or in form of inmates' denials of the darker aspects of their lives – the manifest sense of brokenness cannot be ignored, and this allows volunteers to admit and openly face the brokenness in their own lives. The pain of the person in prison touches on the volunteer's own pain and helps both sides discover togetherness. A fitting image for this process is the 'wounded healer'[13], an understanding of suffering as a pathway to deeper sensitivity and spiritual awareness: At the very point where I am touched by the other person's pain and loneliness, the joint experience brings us closer and removes the dividing walls between us or within us. The key to understanding the identification of Christ with the hungry and the thirsty, the naked and the stranger, the sick and the one in prison, as expressed in the parable of the last judgment (Mt 25:35f.), may be exactly this experience of a togetherness in pain. At the point where they suffer, we see not them but Christ.

It is my strong conviction that the volunteer ministry to those in prison leads as much to visitors' growth and transformation as it does to inmates' rehabilitation.

5. The church's participation in the visiting ministry revives and transforms the church, but only if the ministry is not just *for* but also *with* people in prison. Any training for prison ministry should aim at establishing relational equality.

The visiting ministry not only impacts on the spiritual growth of volunteers, it also affects the church as a corporate body in several ways.

First, a church that establishes relationships with people at the social

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[13] Nouwen, H.J.M. (1979). *The Wounded Healer*. New York: Doubleday. Pastoral care literature has widely discussed and further developed the image; see among others Campbell, A.V. (1981). *Rediscovering Pastoral Care*. London: Darton, Longman & Todd, chapter 4.

margins *becomes a more inclusive church*. Many churches are painfully aware of the danger of turning into a social club, a gathering of the well-adjusted and relatively successful, but it is not easy to break out of this confinement. A church that is connected with people in prison will find itself more fully reflecting the diversity of humanity.

Similarly, the inclusion of those in prison *changes the image of church*. Such a church projects less the image of a victorious communion of the saintly – the spiritually 'successful' – and more that of a fellowship of sinners standing under the cross. Both images are relevant, but the image of the church as a communion of the saints does alienate some people, in particular those who feel unsecure about their faith, who feel uneasy about their spiritual competence, or who generally find communication difficult. The image of the church as a fellowship of broken and wounded people lowers the threshold for people who stand at different points in their spiritual journey.

Such a church, then, may experience *atmospheric change*. As the volunteer in the above story entered prison, a place of obviously broken dreams and frustrated hopes, she felt safe enough to reveal her own brokenness, both physical and spiritual. This applies to the church as a whole. We partake in the pain of those who wait in hope for their wounds to be healed. Where the church participates in the suffering of others, their suffering fuses with ours and can be jointly addressed.

Churches with members engaging in volunteer prison visits have a good chance to harvest the fruits of such outreach – if not in membership numbers increased by the presence of released inmates, then in revived and strengthened church members. A common problem of care ministry is that it, similar to the church as a whole, gradually undergoes a process of institutionalization. The more it grows, the more it is removed from individual responsibility and experience. Participation in prison visits contributes to recovering the personal character of the caring ministry, which is at the roots of charity.

One question is how much *preparatory training* is needed before volunteers join prison visits, or whether such training is needed at all. Ministry leaders who require their volunteers to go through significant training may implicitly communicate the message that inmates need to be approached with special precaution and that such visits are basically different to encounters with other people. My own experience is that a short introduction about dos and don'ts *before* the visit, good supervision *during* the visit, and a thorough debriefing *after* the visit – where visitors can share what touched them and what questions came to mind – is sufficient. Such a low-threshold approach avoids further removing the inmates from the visitors' reality and thus broadening the gap between inside and outside (see next paragraph). If ministry leaders do opt for

proper training, it is imperative that the training aims at deepening the understanding of prison reality, at reducing prejudices that people naturally have due to sensationalized media reporting on crime, and at normalizing visitors' perceptions of inmates.

Whether short or long, training for prison ministry should prepare prospective visitors to understand their ministry not as *for* but rather one *with* those in prison. Too often charity and care ministries designed for a specific group of people turn those individuals into (passive) recipients. Such an approach is disempowering. Truly good news is communicated where people recover their identity and their respect as person and where they are empowered. This means that inmates themselves should, as far as realistically possible, be in charge of organizing and leading community activities – singing, testimonies, or even preaching and teaching. This will naturally lead a ministry to be truly contextual, corresponding to the needs and interests of those in prison. In contrast, if volunteers merely conduct their own activities, their ministry turns again into a ministry *for* inmates rather than *with* inmates. While service to the poor and needy is important, the basic calling as Christians is "…not to do things *for* them but to *be* with them; to enter into a heart to heart relationship with them, to become their friend...and a friend of God."[14]

A powerful image to convey the willingness to engage with inmates without any sense of superiority is the lens of hospitality, migration, and dislocation. This image allows manifold connotations.[15] As guests, visitors express both respect for the life context of the inmates and humility to learn from them. Too often, visitors – without being asked to do so – see themselves as teachers with the noble duty of correcting the corrupt morals of inmates. But when they see themselves as guests, they come with questions and curiosity rather than with answers and solutions. Guests do not dominate but instead make themselves vulnerable. Visitors who come as humble guests turn inmates into hosts who receive visitors, give room to their vulnerability, and care for them. Where inmates are hosts and visitors guests who depend on a graceful reception from their hosts, the usual distinction between giver and recipient of care is turned upside down. Visitors who come with such humility have a tremendously transforming and empowering impact, seen not just in prison but in the paradigmatic story of Jesus's visit to Zacchaeus (Luke 19: 1-10).

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[14] Vanier, J. (2006). *Encountering 'the Other'.* Mahwah: Paulist Press, pp. 42-43.

[15] A more extensive reflection on visitors in the role of guests can be found in Brandner (2014), pp. 148-150. Hospitality has, in recent years, turned into a major theme in missionary discussions. See for instance the presentations at the Conference of Asian Theologians CATS VII in South Korea, published in Christian Conference of Asia (2012). *CTC Bulletin. Bulletin of the Program Area on Faith, Mission and Unity.* Vol. XXVIII, No. 1 and 2.

6. Volunteer ministry affects society at large by undermining the harmful social construction of an inside-outside dualism.

Besides affecting the spiritual transformation of churches engaged in prison ministry, volunteer visitors also learn about the reality of people in prison. Thankfully, most penal systems no longer employ the public spectacle of physical torture; however, punishment is now generally concealed behind thick walls and left to the public's imagination. The hidden world of imprisonment evokes plenty of negative images. Those behind the walls are seen as morally evil, socially unadjusted, educationally unsuccessful, or personally corrupt. The high walls of prisons, usually in remote locations, project an image of inmates as radically different from the people outside and foster a dualistic, black-and-white view of crime and evil in society. For society at large, this has a reassuring and comforting effect, as it confirms the assumption that social problems and conflicts are effectively dealt with and confined to the world behind prison walls. However, this assumption's simplicity is exactly what makes it also misleading: issues of crime, destructiveness, or evil, cannot be cut off from the rest of society and confined to a place behind the walls. We all know that it is in our midst – not just in the form of crimes not yet committed, but in "the rulers, the authorities, the powers of this dark world" (Ephesians 6), in the injustice that erodes our society from within and in the form of a destructiveness that lives in our hearts.

The visiting ministry to those in prison stands in contrast to and is critical of a social construction that divides society in such an unhealthy way. It thus enriches people from various social groups, because it broadens their understanding of a usually invisible part of society. Visits thus have a socially bridging function, countering social exclusion and changing visitors' perception of society and of remedies for maladjusted people.[16] The remote location of most prisons, the security fences that create or support a negative image of those inside as dangerous people who need to be locked up to protect everyone else, and the difficult entry procedures that underline the inside-outside separation – all these contribute to the dualist social construction that ignores the reality of the people in prison. Inmates are not evil people; they have, among many other things, done evil things, yet whatever the severity of their crime, they are more than their actions. They are ordinary people like you and me. Simply speaking, the visiting ministry makes prisoners real, demythologizes them, makes it possible to see them for what they are – ordinary people in an extraordinary situation. Or, to use an image: Justice is usually symbolized by blindness, and indeed

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[16] See from sociological side a study on the change of perception of inmates among prison volunteers in Hong Kong supporting the thesis above, Chui, W.H. & Cheng, K.K.Y. (2013). Effects of Volunteering Experiences and Motivations on Attitudes toward Prisoners: Evidence from Hong Kong. In *Asian Criminology,* 8:103–114.

justice should be dispensed independent of a person's public standing or wealth. However, the story of a death-row inmate in Syria writing about his many years as an inmate offers a different twist, criticizing the image of the blind justice and calling for a justice who keeps her eyes wide open.[17] People should be able to see what happens in prison and rehabilitation.

Finally, prisons are surrounded by shame. This shame affects inmates as well as their families, and many parents of inmates experience a social stigmatization from their wider family, from their neighbors and from the public that drives them into isolation. Establishing contact with those in prison is, as such, a basic step that contradicts the public strategy of shunning offenders. It breaks through the isolating walls that have buried them under negative metaphors. Prison ministry will thus naturally also reach out to the families of inmates and break through their isolation.

7. Prison visits are a form of community participation in rehabilitation that mitigates the harm caused by imprisonment. Visitors play a role in the dynamics of prison society.

A significant part of the harm caused by imprisonment originates from the unique social arrangement of the 'total institution' of prison[18], where a large number of like-situated inmates face a single authority, the prison administration. In order to mitigate this strict dualism of inmates and guards – another expression of the inside/outside dualism discussed above – prisons around the world have some form of administrative supervision and channels of complaints. Among them are justices of the peace and legislators who inspect the prison or to whom inmates can write, departmental complaint units, and of course the judiciary where inmates can lodge legal complaints. However, those who decide to lodge a complaint face an uphill battle. First, they are discouraged from doing so because complaints cause the administration extra work, disturb the system, and create an annoyance. Inmates' complaints may thus lead to prison staff singling them out for harsher treatment, though kept well within legal boundaries. Second, inmates may find it extremely difficult to gather sufficient evidence of administrators' wrongdoing. Guards naturally support each other through their testimony and know how to hide from administrative supervision. The ubiquitous CCTV camera systems in prison always have blind spots – for instance, areas out of reach for reasons of privacy, like bathrooms. This disadvantage is further aggravated by the fact that judicial bodies and other recipients of complaints usually give less weight to the testimonies of people with criminal records. Administrative

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[17] Khadour, H., (2013). *La charette d'infamie. Récits*, Traduits de l'arabe (Syrie) par E. Horem. Orbe, Switzerland: Bernard Campiche Editeur, 11.

[18] Goffman, E. (1961). *Asylums. Essays on the Condition of the Social Situation of Mental Patients and Other Inmates.* Garden City, N.Y.: Anchor Books.

supervision and complaint channels are thus, in reality, quite limited.

It is at this point that visitors play a social role. The permission for visitors – chaplains and lay visitors – to interact with inmates without interference from the staff is an exceptional privilege. Their visits are a form of *community participation* in incarceration that cuts across the otherwise dualist character of the prison's social organization. The visitors' presence mitigates the isolation that affects not only inmates, but also staff, and it helps both outsiders and those inside prison to dissolve any black-and-white construction of their reality. Their mere presence has thus a normalizing effect that may even represent some form of *community supervision*. This is more likely the case for a chaplain who has largely unlimited access to the world inside prison. Of course, only in very rare cases would chaplains be eyewitnesses to wrongdoing, but they are aware of the tensions that cause conflicts, they may have other background information about certain events, and they may have a unique perspective on the aftermath.

Chaplains and lay visitors only rarely play a role in official complaints, but they contribute to community supervision in other ways. First, they give inmates a chance to let off steam without formally lodging a complaint. Opportunities to talk with neutral visitors are occasions to think carefully about whether such a step would make sense. The administration welcomes such service for its pacifying impact. Second, chaplains – in rare cases also lay visitors – can bypass the bureaucracy and communicate more directly with prison authorities. Although such circumvention of official complaint channels should be used conservatively and diplomatically – against some chaplains' preference for more high-profile advocacy – such non-bureaucratic communication is rather to the benefit of the institution. Thirdly, and without much action, the mere presence of visitors reminds administrators that the prison is a social institution belonging to the whole of society: it is funded by taxpayers and offers a service to the community. The closed reality of a prison, with the world of inmates and guards so radically cut off from the world outside, tempts prison authorities to regard it as their own little fiefdom. Religious visitors entering the institution represent society and thus implicitly reclaim the prison. In a diplomatic and low-key manner, and without further ado, they contribute to liberating inmates and staff from a harmful folie à deux.

8. Volunteers grow in their understanding of the social and legal aspects of imprisonment. The ministry of concern for those in prison thus naturally turns into a social ministry that is concerned with the politics of incarceration.

By spending time in fellowship with those in prison, visitors will gain a deeper understanding of the situation of people in prison and will learn a perspective on society and justice that is shaped by this fellowship; in

other words, they will learn to see the world through the eyes of those in prison and grow in the awareness of the harm that imprisonment causes.[19] Fellowship with inmates leads naturally to critical questions about penal administration and livelihood in prison.

Visitors may come to ask: Could prison punishment not be implemented in ways that allow greater internal freedom? Is it necessary that prison sentences include not only deprivation of freedom, but also severe limitations on a healthy lifestyle? Or they may ask: Wouldn't a system of incentives bring about better internal discipline and improvements in inmates' behavior? Some penal systems do have a well-established system of incentives (including provisions for additional visits, open or marital visits, furloughs, a parole system and internal study support). However, many penal systems offer little incentive for change: Inmates are locked up and given no hope that personal effort will bring improvement in life. Could rehabilitation not be improved by prison sentences that allow – under the condition of good behavior – a gradual opening with increasing frequency of open visits and furloughs?

These critical considerations ultimately lead to questions at the heart of our criminal-justice system: Why is it not possible for inmates on short sentences to serve their time in low-security institutions, in halfway houses, or with monitoring-device schemes? What penal alternatives to prison sentences exist and why are they not more often applied? Should the possession of small quantities of drugs for personal consumption, obviously a victimless crime, really be penalized by imprisonment? And, responding to more globalized criminal activities: How can the repatriation of inmates be accelerated so that they can serve their sentences closer to home? In most penal contexts, very little effort at rehabilitation is made for foreign inmates. Transfers to their home countries would improve their chances of rehabilitation, if not institutionally provided at least through physical closeness to their families.

Such questions may not find easy and straight-forward answers. Penal and judicial experts have clear reasons for specific penal and judicial policies, and in systems working as intended, these policies receive regular, critical consideration. However, independent prison visitors play an important role within the community as low-key experts on penal administration and criminal justice. They are among the very few in our society who have independent and first-hand knowledge of prison and

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[19] Regarding the harm caused by imprisonment see Haney, C. (2002). The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment. Paper presented at the National Policy Conference on *From Prison to Home: The Effect of Incarceration and Reentry on Children, Families and Communities.* January 30–31, 2002. U.S. Department of Health and Human Services, The Urban Institute, and Haney, C. (2006). *Reforming Punishment: Psychological Limits to the Pains of Imprisonment*. Washington DC: American Psychological Association.

thus are able to develop a qualified opinion that takes into account the perspective of the inmates. Concerned family members and ex-inmates usually feel too ashamed to articulate these questions.

Christian prison ministry thus has an important political function. In recent years, various judicial contexts around the world have tried to reform their judicial and penal systems in the direction of a more restorative justice system, that is, one that pays attention to the victims of crime, that tries to restore the damage caused to the wider community, and that reduces the harm caused by imprisonment. This important movement towards restorative justice finds significant support from the many independent volunteer visitors who contribute to this discussion and help it break out from the small circle of penal and judicial experts.

Chapter 10
Piety and Devotion before God in Pastoral Counselling Work Relating to Persons Touched by Crime

Martin Kruklis

Prisoners represent a wide range of people. All of them feel lonely and abandoned, because they are faced with the harsh realities of life - with strict limits and regime, with coarse, rigid rule-based rigid rules-based mode of life and sometimes with unpleasant human rights violations, in addition, almost all of them have unsettled or damaged relationships in the past. So they have no positive contact with the outside world. Some of them deny it, while others make no secret of it, but everyone thirsts for human warmth and the responses to the questions of life. A pastoral employee – a chaplain, a priest or a volunteer - is one of the few persons who are allowed to keep these people in informal relationships. In this situation, a pastoral employee usually faces two challenges - the inability to give his or her attention to all those who wish to do so and the incompatibility of his or her personal values with the personal values of those who are under care. To select a solution to overcome these challenges, let us follow God's example. First of all, it concerns the issues on what God teaches about sacrificing and mutual self-giving relationships, about where to look for the sources of strength for their selfless and enthusiastic pastoral activities and what person's qualities and features should be developed to overcome the misunderstandings and moments of weakness.

1. Piety and devotion before God

Piety and devotion before God form the basis for a genuine human attitude towards God, thus contributing to human unity with Him. A true piety is intentional and results from the experience of God's love.

Creatures are trembling with piety before God (cf. Rom 8:19), as they are completely dependent on their Creator, but man is different from other creatures because to some extent he is similar to God and is appointed to rule over the rest of creation (cf. Gen 1:27 -29). It is only natural if a person has a sense of helplessness and weakness, his otherness from the Creator (cf. Job 40-42). However, to achieve a genuine piety man needs the personal experience of a relationship with God, because man was created in order to build relations (cf. Gen 2, 18.21-25).

The word *fear*, first of all, is related to the law observance (obeying the law) as we read it in Deuteronomy (6:2; 6:13) and in Proverbs (13:13). Secondly, piety has a social dimension, in relation to peers - parents (cf. Lev 19:3), the poor (cf. Lev 19:14) and the elderly (cf. Lev 19:32). In all

these areas we read the words - I am the Lord your God! God justifies the requirement to fear with obedience to an Authority who has always done good to people. In this sense, *fear* is also related to the feeling of respect and reverence. In a broader sense *fear* leads to security and salvation (cf. Proverbs 14:26-27). While in Jewish Wisdom literature fear of God is associated with the beginning of wisdom (cf. Proverbs 1:7; Ps 111:10), but the prophet Isaiah sees in *fear* the fruits of the Holy Spirit (cf. Is 11:2).

In all these cases we see that *fear* has been used not to frighten people, but to encourage them to trust in God as piety before God will increase our benefit. God calls people to be in His presence, and a positive human response, obedience to God, guarantees His presence. If we trust and obey God, then soon we hear God say - do not be afraid, because God is not a cruel and arbitrary monarch, as Satan by his malicious "catechesis" tries to tell us (cf. Gen 3), but rather a careful father who cares for the needs of his children. Therefore, He says "do not be afraid" to the patriarchs, when they receive His promises (cf. Gen 15:1; 26:24); to the people suffering in exile (cf. Is 41:10,13; 43:1.5, 44:2); to the prophets, when they must proclaim the will of God (cf. Jer. 1:8; Ec. 2:6, 3:9; 2 Kings 1:15) and Jesus says the same to his disciples when speaking about those people who will inherit the kingdom of the Father (cf. Mt 6:25- 34; Lk 12:32).

However, if a person chooses to disobey, then *fear* for him implies the meaning of "dread" as God is always just (cf. Jos 24:19). Those who disobey Him, receive a fair repayment (cf. Dt 6:14-15). Repayment here shall be understood as the consequence for breaking God's Law. It relates to justice because if there exists an unchangeable law which a person is unable to change, then the person who has broken this law is responsible for the non-compliance and unpleasant consequences, and that is fair. However, this applies only to those who maliciously do not want to follow the laws of God and are hardened by their wickedness. Conversely, those who recognize their guilt and rely on the grace of God already embody the spirit of the children of God of the New Testament, where love casts out any fear, because fear expects punishment, but love expects mercy.

In Deuteronomy 6:13, fear appears along with other indications and throws up a number of correlations between related concepts. To fear, to serve and to know can also be considered as three stages on the way to God. Getting to know relates to swear, as you cannot really swear if do not know Him whose justice you invoke. Getting to know without piety can have severe consequences for which God warns in Deuteronomy 5:11 and what we know as the Second Commandment, which forbids the abuse of God's name. Piety is the starting point that allows you to start to understand the will of God, which He has clearly expressed in the Ten Commandments. Piety helps to serve God in the best way and fruitfully. Besides, God has given the specific instructions on how a person can become pious (cf. Dt 6:6-9). It means to live by the law of God on a daily basis, each of his actions

subordinating its requirements. By serving to God, a person gets better acquainted with God as he performs His will, and with all his essence shows how much God is important to him. True piety is the basis of the experience of God's love and leads to a deliberate and targeted practicing charity.

In summary, we conclude that true piety manifests itself as a deliberate and purposeful search of contact with God. Wholeheartedly repeating a prayer, a believer can with spiritual eyes see God and to get to Him through the secret door of the soul. Paraphrasing, we can say that a genuine, regular prayer is the first step in the direction of genuine piety, which will give the desired unity with God.

As previously seen, a right fear of God is closely related to obedience, but it means - listening to God. The apostle Paul wrote that faith comes by listening to God's Word (cf. Rom 10:17). By faith man obeys and receives the experience of God's love, which is further manifested through charity. The word *listen* in Hebrew also has several meanings, which well explains its implied sense. First, as with *fear*, it is a call *to submit to*, *to obey*, secondly, it means *to respect* with a sub meaning *to hold* and *to follow*, and, thirdly, *to listen to* inevitably requests *to do* or *not to do*, which is a response to this call (cf. Ex 19:8, 24:3,7). Taking into account the fact that there is a question of listening to the Word of God, but the Word of God is inseparable from the word truth; to the Jews the word to listen also meant to open to the truth, the meaning of which is a sound basis (cliff). It implies confidence in a covenant with God, taking it into our heart, obeying and executing it. In other words, by listening to God we open over selves to the truth and do our works in truth. Scripture highlights the act of Mary, Mother of Jesus, who keeps the Word of God in her heart (cf. Elk 2:19, 51). The heart symbolizes the deepest centre of human existence, the place where man chooses between good and evil. Scripture states that Mary always respected and obeyed the Word of God, so she was able to listen to it. Directly in connection with his mother Mary, Jesus also reveals the deepest link between the listening and respect, "Rather, blessed are those who hear the word of God and observe it!" (Elk 11:27-28). So the right listening to the Word of God is attributed to those who in some way are similar to God - blessed, because God is holy.

But a man does not want to listen to God (cf. Dot 18, 16:19), and it is his tragedy. He is deaf to the call of God - his ears and heart are uncircumcised (cf. Jeer 6:10; 9:25; Ac 7: 51). Jesus says that people do not understand because they cannot listen (cf. Jan 8: 43, 47), and that they cannot listen because they do not want to follow." But a man does not want to listen to God (cf. Dot 18, 16:19), and it is his tragedy. He is deaf to the call of God - his ears and heart are uncircumcised (cf. Jeer 6:10; 9:25; Ac 7: 51). Jesus says that people do not understand because they cannot listen (cf. Jan 8: 43, 47), and that they cannot listen because they do not want to follow."

The practice of piety helps to hear God's paternal explanation, which can be found in Deuteronomy (6:6-9). To record these words in one's heart (6:6), literally - upon one's heart, means to evaluate the Law of God higher than our personal opinion, beliefs and actions and to realize that they must be aligned with the Law of God. In order to successfully coordinate our thoughts with the laws of God, we must understand that they operate everywhere - in our family, walking on the road, getting up and going to bed (Dot 6:7). These four instructions include all possible human psycho physiological states in the space. "Bind them for a sign upon thine hand, and they shall be as frontlets between thine eyes" (Dt 6:8) means that the Law of God must be constantly present in our thoughts - it must be contemplated (between the eyes) and then it must manifest in our works (sign upon thine hand), or more precisely –on the pulse of blood because this word must be entered into our bloodstream so that it becomes a natural expression of life in certain positions. While "Write them on the doorframes of your houses and on your gates (6:9) calls to ask for a blessing for each job by launching it, and thank God, completing it. Thus, the main qualities of pastoral staff which should be developed and which affect pastoral work are piety and listening to God. Piety promotes the implementation of the task for a man given by God - careful management of the world which also includes the pastoral work, as it leads a man to constant communion with God. If we listen to God, we hear the truth, and our works become purposeful and meaningful. Piety requires us to perform a faithful and regular daily work with ourselves.

Piety before God as the basis of respect for the other person

A pious man is called to see God face to face and live together with Him (cf. Mt 5, 8, 25, 21:23; 1 Cur 13:12; Heb. 4:7-11; 1 Jan 3:2), but it is inextricably linked with our understanding of self-identity. Now we will explore how a person's identity is revealed within the context of the Love Commandment, encouraging us to unselfishness as we are called to love God, ourselves and our neighbour. The concept of the self both in the Old and the New Testament is not limiting, it does not determine a certain person – himself or his thoughts - as a criterion, but abolishes restrictions and prejudices.

Charity about which Jesus speaks is directed to the benefit of our neighbour - it does not highlight us, but the other person (cf. Jn. 8, 28). With the same zeal with which we want to fulfil our desires and needs, we try to help other people in their needs. This means not to impose restrictions on how much I will help or devote my time according to my own understanding, but to help as much and as long as the person in need requires help. This means unlimited growth and expansion of love as the person in need may be anyone who comes into our sight. More important is to think about the correspondence of my actions and behaviour to my

vocation, rather than to differentiate it depending on the other person's importance or quality. Simply put, it means to dedicate myself and my time to the other person to such extent as may be necessary for him or to such extent as we ourselves would like if faced with similar situations. If we love our neighbour, we inevitably come to relationship with God and if we love God, we start to look for our neighbour.

God assures us that what is of most importance is loving relationships both with Him and with each other (cf. 1 Jn. 4, 19-21), and He himself leads us into a life of love. We must conclude that love is the most important feature that characterizes us as God's children and heirs. Love defines our individual identity, and therefore, by our actions we are able to imitate and spread it. God is love, and man reflects His love, because love is His work we can find our true identity and dignity by looking at Jesus Christ, who is the very image of God (cf. Col. 1:19) and who loved to the end (cf. Jn. 13:1), showing what it is to be true man (cf. Jn. 19:5), and what man must do in life to suit his nature. Throughout this process, God does not confuse the boundaries between persons but respects each person's deeply personal and unique nature which reveals God's omnipotence and universality, as well as highlighting human dignity. The behaviour of a child of God is a testimony of God's love experience based in piety, and it is no longer sentiment, but a will that makes one overcome the difficulties caused by selfishness according to the person's identity and dignity. Here we also get an answer about our ability to be selfless, self-sacrifying and open to a mutual self-giving relationship with any person. Due to a pious life and practicing the truth the person stays with God and with an already transformed look of love sees the image of God in his neighbour, and feels the ability to sacrifice himself to other people because he is united with God and God himself is present and manages the two-way process of love. Thus, the human foibles remain in the background - it also explains the ability to maintain equal and trusting relationships with people who do not deserve it humanly. Therefore, we can say that piety before God is the basis for true identity awareness and true respect for the other person which is the same creature of God as I am. Due to the relationship based upon dedication, both persons – the pastoral employee and the person under care - become partners for some time to get God's transforming love experience passed from one person to another. This unity in love of God helps us understand each other, it helps to listen carefully, to respond accordingly, to suffer compassionately and to rejoice truly because God himself tells us of His pain, joy, frustration or hope through the fulfilment of the other person's life events. Thus, due to the mutual self-giving relationship both participants undergo changes.

Summarizing this section, we can conclude: To soothe the thirst of the sentenced person for human warmth and help them to find answers to their essential existential questions, we need a personal, a regular practice

of piety in order to fulfil the actions of a pastoral worker with truth and relationships - with God's presence. If a pastoral worker is distracted or otherwise experiences some weakness, he must with meekness and peace submit to the remedial action of God's will. God often uses our human limitations to perform unimaginable things. Without God's sanctifying presence the favourable changes of a person irreversibly oriented to the image of God would be impossible. We have also found out that a mutual self-giving relationship implies a multidirectional movement and it leaves an impact on all the participants, but what happens as a result of this interaction, we will explore in the next section.

2. Charity as a service to the least brothers

The aim of pastoral care is to break all the barriers and obstacles which are in the way of the persons under care for opening new horizons of life with new opportunities. This is an internal release process based on the power of God; Jesus is the one who restores human identity, so involvement of Jesus in pastoral work includes restoring the person's inner freedom.

All of us have our own forms of oppression that split and fragment us - pain, blindness, sadness, sins or deformity. During the pastoral process, the person meets with the Gospel values that offer Integral and consistent ethical and moral standards that restore the wholeness of the person. In the middle there is a free personal choice. This choice can also be destructive. Liberation means a radical personal transformation in the person who is ready to take a serious and healthy decision corresponding to the nature of a child of God. As previously mentioned, both are participants in a mutual self-giving relationship - the pastoral employee whose personal sacrifice is deliberate and the convicted person who allows another person to enter into his life – undergo changes in their personal life. God's love is completely selfless and as an answer requires the same unselfishness. In contrast, human nature is selfish because it is injured by sin. Selflessness is not pleasant to it, so on its own it cannot accept God's transforming power of love and surrender to it. A constant position of love in man develops gradually. It is a long-term process, which is the training for human nature weakened by sin where the coach is God himself, the training partners - people, but the methods - the practice and perfection of virtues.

Through the interaction of God's grace and man's piety a new creation in Christ is born. Jesus says, "I desire mercy and not sacrifice. For I did not come to call the righteous, but sinners to repentance." (Cf. Mt 9, 13) By these words He said that grace is greater than justice. The life of a new creature in Christ is based in truth what can be called justice. Jesus stressed that He has to come to sinners, to those who do not justify themselves, thus usurping the righteousness of God with power, or are not able to justify themselves because they are too weak. His disciples were the sinners who admitted their guilt before God and to whom He forgave their sins,

transforming their human nature and restoring their similarity with God. God's grace is the other feature of a new creature in Christ that reveals the true power of God's love (cf. Mt 9:6). Jesus taught his disciples to pray: "Forgive us our debts, as we forgive our debtors (Mt 6:12)," otherwise they were like the ungrateful servant in the parable of Matthew (cf. Mt 18:23-35). St. Paul later explained it in detail, referring to the leading role of mercy in interpersonal relationships (cf. Rom. 14:13-15). Jesus also points to the opportunities and benefits that await the disciples when they show mercy to a person in need (cf. Mt 25:31-46). In the parable of the small child (cf. Mk 9:37), by which each disciple is called to pick up and cuddle the smallest, most vulnerable, Jesus reveals that this is an opportunity to pick up God himself, to drink from the very source of Love that each child of God wants most of all, because of their thirst (cf. Jn. 7: 37-38). An active relationship with God further strengthens the person's faith and makes this person able to accept Jesus and a way of life of servanthood required by love of God (cf. Mk 10:43-45), and to live like children of God. Each decision to love is fortified by the grace of God. Accepted in faith, it becomes possible, as it comes from Jesus who works through the piety and obedience of the disciple (cf. Gal 2:20). Jesus calls to be creative, and the words go, and do thou likewise (Lk 10:37) means - be creative, think according to your life situation, only take into account the principle of life for every child of God - the Commandment of Love (Jn. 15:12-13), which gives a person clarity before making any choice. Jesus spoke in parables, in order to awaken the mind of the surrounding people, to unleash their freedom and creativity, imagination and spontaneity, in other words, all the talents which man has received from God, so that freed from the grip of sin, man could fully serve Him.

The worldview and relationship attitudes of a new creature in Christ radically change. The worldview change is associated with the inevitable judgment of God and the assessment of the human condition in eternity which is largely linked to the human treatment of the least brothers of Jesus (cf. Mt 25:31-46). The concept of the least brothers of Jesus in the context reads as follows: "Truly I tell you, whatever you did for one of the least of these brothers and sisters of mine, you did for me" By studying the text, we see that service to people in their needs is equivalent to the relationship with Christ, but it is not completely clear to whom the words the *least of these brothers and sisters of mine* refers. In the light of the tradition which teaches that Jesus was the only child of Mary and Joseph, as well as the use of the Greek word *Adelphi* in other places of Matthew's Gospel, two explanatory directions appear. In the fragments of Mt 12:48-50; 18: 15,21,35; 23:8; 28:10 the word *brothers* refers to the members of the Christian community, while in the fragments of Mt 5:22-24,47; 7:3-5 - it is any person as the object of ethical obligation. However, it remains unclear what is meant by *the least*.

Serving people in their needs means the assistance in difficulties, care for the infirm, oppressed or marginalized etc. This service is the indicator of the relationship with Jesus. Jesus calls us to love God, and we know that "God so loved the world, that He gave His only begotten Son, that whoever believes in Him shall not perish, but have eternal life" (1 Jn. 4:9). It follows that by taking care of people in need we confirm that we love Jesus, - that is the first conclusion. Secondly, we conclude that Jesus' brothers can be both Christian community members and any other person. Jesus' least brothers are his disciples who are in difficulty. Following this comment, the criterion of the Court is my responsibility for how I have treated the messengers of the kingdom of heaven who are the least brothers of Jesus - His disciples who suffer. St. Teresa of Calcutta in her ministry used the motto from the Scriptures – "whatever you did for one of the least of these brothers and sisters of mine, you did for me" (cf. Mt 25, 40). "The people who have forgotten what is love, what is human love because they have no one to love them, are also the poorest of the poor." So it is about Jesus' least brothers says St. Teresa of Calcutta. Here we discover the true meaning of the word *the least*. *The least* is synonymous with *the poorest*, but they, in turn, are the people who have been separated from God's love, which in a paradoxical way is received and given to people as the care for one another, without selecting and indiscriminately, but assuming every person as our neighbour.

Thus identifying the least brothers of Jesus and revealing the worldview of the restored person, we conclude that everything associated with the words *poverty* and *suffering* reveals the presence of the Kingdom of God on earth. To God what is of most importance is the merciful attitude of the restored person for fellow human beings - our neighbour, because Jesus' least brother can be any person into our lives, depending on our attitude towards him. The determinant is the right choice of the restored person in relation to what is offered to him as an opportunity to practice charity in all life situations, twenty-four hours a day. The responsibility of the restored person (Jesus' disciple) for the treatment of God's offered love is growing. Therefore, to assert the identity of the child of God in the Day of Judgment and receive eternal life the restored person - a new creation in Christ – must implement his faith through the works of charity (cf. Mt 25:31-46), because as Mother Teresa has claimed, "Faith in action is love, and love in action is service."

Man is free to choose God or reject him, but pastoral employees are obliged to be united with Jesus, which is the witness of God's love for all - not just those who are pleasing. How much good can be done within a few minutes and in so inhumane conditions!

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Chapter 11
Restorative Justice and Catholic Prison Chaplaincy
Theoretical and Practical Reflections

Pieter De Witte

1. Contextual considerations

These reflections on the relationship between Catholic prison chaplaincy and restorative justice (RJ) arise from a particular context. Partly, they are based on my experience as a chaplain in the prison of Mechelen (Belgium) where people are kept in pretrial custody or serve shorter sentences. In what follows I will also draw on some experience as a researcher both in theology and in the *Leuven Institute of Criminology*, where I am a member of the research line *Restorative Justice and Victimology*. The ideas in this text were developed in an inter-religious environment (and even an 'inter-worldview' context, as it includes also secular humanist counselors in prison). As is clear from the many conversations I had with people with other convictions, all religious and non-religious worldviews that have representatives working in prison are challenged by the visions, values and concrete practices of RJ.

The Flemish Catholic chaplaincy service has a relatively long tradition of reflecting on the reality of RJ in relationship to pastoral care, not the least due to the work of the former responsible for the formation of Catholic prison chaplains, Fr. Achiel Neys (†2013). The writings of Neys (unfortunately for the non-Dutch speaking reader none of them are translated) give a clear insight in the way the Catholic prison ministry has always been in dialogue with contemporaneous criminological models.[1] In the 19th century, in what Neys has called 'the era of the chaplains', the work of Catholic chaplains was fully determined by the supposed aim of the prison system, namely the religious and moral 'elevation' of the 'fallen' criminal.[2]

Throughout the first half of the 20th, Century this classical moralistic approach was somehow abandoned and gave way to the 'anthropological

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1 For a historical overview of the chaplaincy service within the Belgian prison system, see Neys, A. (1994). Pastorale en levensbeschouwelijke begeleiding. In A. Neys, T. Peters, F. Pieters, & J. Vanacker (Eds.), *Tralies in de weg. Het Belgische gevangeniswezen: historiek, balans en perspectieven*. Leuven: Universitaire Pers, pp. 297-332 and Sneyers, F., & Neys, A. (1999). De katholieke aalmoezeniersdienst binnen het Belgische gevangeniswezen. Pastorale kaart. s.l.: *Metanoia*.

2 One is reminded here of the Latin words engraved on the wall of the courtyard in the Central Prison of Leuven (Belgium): *Hic miseros lapsos fides, labor, scientia relevant* ('Here, the miserable fallen are uplifted through faith, labor and knowledge').

school' which substituted evidence-based diagnostics and treatment for moral sermons. In this new situation, the chaplains had to reposition themselves and redefine their work in relation to a more deterministic anthropology and to the dominant discourse of social re-integration. One of the key questions here was whether chaplains had to stick to the old paradigm of moral advancement and whether they should engage in open resistance against the new scientific approach. This exercise of reconsidering one's identity in relation to changing paradigms in criminology and in society as a whole was necessary once again for Catholic chaplains when (roughly) in the 1970s the prison system itself as an instrument of resocialization was increasingly put into question. One of the critical currents within criminology in the last decades of the 20th century (and beyond, of course) was precisely the RJ movement. Critical criminological attitudes towards imprisonment forced chaplains to wonder whether their presence in prisons serves the self-legitimization of the prison system and whether it is part of their core business to raise their prophetic voice against inhuman penal practices.

It is impossible here to offer even a brief analysis of the various reactions of prison chaplains to the changing tides of the theory and practice of incarceration. It should be clear, however, that it is objectively impossible for Catholic prison pastoral care to step outside the debates about imprisonment in society. Every pastoral-theological option of chaplains has criminological implications, because each option will offer either support or resistance to certain penal ideas and practices. Even if prison chaplaincy would withdraw into the safe and sacred space of 'the religious or spiritual needs' of inmates (as if one could isolate such a spiritual realm) the pastoral practice would still imply an endorsement of the existing views on imprisonment and an inherent choice for silencing the prophetic potential of the Catholic tradition and for supporting the *status quo*.

The work of Achiel Neys is itself an example of the shift in the self-understanding of Catholic chaplaincy in reaction to changing paradigms in criminal justice. In his master's thesis in theology[3] Neys is still polemicizing vigorously against the ancient moralistic paradigm with its focus on sin and penitence and its guilt inducing methods. The real emphasis of pastoral work in prison should be the reintegration of people in society. In his writings from around the turn of the century, however, his attention moved to restorative practices within and outside prison and this implied the return of some moral concepts (such as guilt, penitence and remorse) which were previously associated with 19th century moralism.[4]

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[3] Neys, A. (1970) *De penitentiaire pastoraal als probleemsituatie*. Leuven.

[4] See, for instance Neys, A. (2001). Over "de herstelgerichtheid" van het gevangenispastoraat. In *Herstelrecht tussen verleden en toekomst. Liber Amicorum Tony Peters*. Leuven: Universitaire Pers, pp. 399-424.

This brief example does not imply that the practice and theory of prison pastoral care simply copied dominant criminological models and ideas. First, the RJ movement, despite the fact that it is successful in many respects, can hardly be called the dominant answer to the question on how society should deal with transgressions of the criminal law. Rather, it remains a model that is critical towards a still dominant punitive approach in Western societies. The fact that RJ appeals to pastoral workers is often related to the latter's dissatisfaction with the prison context in which they work, as I will argue later. Second, and on a more fundamental level, ever since the breach of the 19th century symbiotic unity of the prison system and chaplaincy activity, pastoral workers and theorists dealing with prison pastoral care have always been aware of the fundamental distance between the rationale of imprisonment and the rationale of prison chaplaincy. No matter how much sympathy there is among pastors for certain ideas and practices of prison reform (and indeed reform of the whole criminal justice system), there can be no return to the situation where Catholic chaplains would *only* be seen as campaigners for such ideas or functionaries within such practices. The relationship between pastoral work and normative criminology (the quest for 'good practices' in dealing with crime) will most probably be one of *association* (and often deeply involved association[5]), rather than of full *integration*.

So here is a first complexity of the relationship between chaplaincy and the system of criminal justice. On the one hand, choices of chaplains for particular pastoral strategies will always imply preferences or even active support for certain way of dealing with crime in society. Pastoral and theological options always have criminological implications. On the other hand, chaplains have their own particular role in the penal system, their own place in which they 'do their thing'. This role cannot and should not be fully translated into its criminological significance.

2. A paradox

In what follows, I will focus on another aspect of the complexity in the relationship between chaplaincy and criminology, something which is also a matter of affinity and distance, of likeness and difference. When it comes to the 'paradigm' or the 'movement' of RJ, one notices a certain paradox in the attitude of prison chaplains. On the one hand, there are *strong conceptual or ideological links* between RJ and prison pastoral care. Chaplains have a 'gut feeling' that there is some important affinity

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5 Philippe Landenne SJ mentions the concrete involvement of Canadian chaplains in restorative justice practices and the view that restorative justice forms for pastoral workers in Canada 'the very matrix of [their] commitment behind prison walls'. Landenne, P. (2009). Promoting a Restorative Justice Defying Prison Walls? *Promotio Iustitiae*, 103(3), pp. 45–50, here p. 46.

between their own work and the fundamental values of RJ. They feel that they should offer support to the way RJ attempts to change the customary reactions to crime in society. On the other hand, however, there are, at least in the context in which I work, only *weak practical links* between the actual pastoral activity of chaplains and the concrete practices of RJ. Practitioners in RJ and in pastor care each seem to work on their side of the fence, maybe expressing admiration for each other's work and exchanging words of encouragement, but mostly without really engaging in joint practices.

This paradox of theoretical kinship and practical divergence is not all that difficult to explain. Prison pastoral care is mainly a form of 'offender care' (or care for those who are at least *accused* of criminal offenses). Chaplains lend their ears to one side of the story and therefore cannot easily adopt the standpoint of those facilitating restorative processes, a standpoint marked by impartiality, or rather: 'multiple partiality'. Even though in some cases chaplains may come in situations where they have contacts both with inmates and with members of their network outside the prison (e.g. family members), this does not happen on a structural basis, nor in the balanced manner that is typical of RJ.

Another way to make the same point is to say that chaplains to a great extent work within the confines of the penal system. Despite the prevailing discourse of making prisons a more human and even a more 'restorative' place, the basis of incarceration – sadly – remains the isolation of people from their relatives, from the ones they may have injured and from society as a whole. RJ, by contrast, aims at communication and connection and therefore it is by its very nature critical towards the prison system as it exists in our societies (with its high incarceration rate and its frustrating, relation-killing effects on people), though not necessarily opposed to imprisonment as such. Chaplains often sympathize with this critical attitude, for the Christian message shares the relational and communicative focus of RJ. However, the position between RJ practitioners and pastors is quite different here, especially from an 'official' perspective. The former work in what could be called an alternative to dominant penal practices, whereas the latter's working space is more strongly defined by the prison walls. Through pastoral counseling inmates may think about their lives from the perspective of another (biblical) kind of justice than the rather harsh and merciless justice engrained in the penal system. In that sense, pastoral practice comes close to the quest for a more 'wholesome' justice in RJ. Yet, it is hardly imaginable that official justice system could come to regard this counseling as an alternative or complementary way of reacting to crime, as may be the (ideal) case with RJ practices.

So far, I have tried to 'explain' (in a descriptive and not a normative way) the lack of concrete collaboration between RJ workers and chaplains by referring to the nature of their work and their different place within the overall structure of society's response to crime. Part of the explanation

may, however, also lie in a certain 'burden of history' that weighs on the shoulders of chaplains. As I explained, the prevailing paradigm of 19th century Catholic chaplaincy service was strongly moralistic. The chaplain had to point out the guilt and responsibility to the offender so that he or she could 'convert' to the morally (and religiously) good life. This approach was not only abandoned, but chaplains even developed a certain aversion against all moralism. Nowadays, when asking chaplains about their work, chances are good that one would hear about 'lending their ears to', being there for' or 'giving spiritual support to' offenders. There will hardly be any talk about bringing offenders back 'on the right track'.

If one looks briefly at the literature on RJ (not in a literal sense, of course, as if one could really do that *briefly*) one cannot fail to notice the importance of the concept of responsibility. One of the key insights of RJ is that crimes create responsibilities, especially on the part of the offender.[6] It is clear that responsibility is a *moral* concept and that RJ in one way or another aims at a reappraisal of the moral aspect of crime. 'Morality' is emphatically *not* seen here as a set of rules for conduct, but rather as *the quality of relationships between people*. In that sense, one could also say that RJ attempts to liberate the multilateral *relational* character of crime from the bondage of a unilateral punitive system of criminal justice. Even if this relational focus of RJ resonates with the concerns of prison chaplains, the emphasis on the responsibility of offenders in RJ may arouse some caution on the part of these chaplains. In their pastoral 'offender care' chaplains perceive how those accused of or convicted for crimes are constantly exposed to people who want to confront them with their 'responsibility': judges who find it necessary to pronounce their judgement in the form of a moral sermon, psychologists who want to find out whether the offender is *really* remorseful, prison staff who insist that obedience to the prison rules is important for rehabilitation, relatives who want prisoners to face the consequences of their imprisonment for their families, and – indeed – victims who fairly claim their rights. In this situation, chaplains are often inclined not to speak (too often) about responsibility, but to create a 'safe haven' or a 'sanctuary' where people in prison can breathe and come to terms with the issues they are struggling with, without being pointed out time and again how responsible they are for the crimes they committed, for their present situation, for the needs of the victims and for their future life. Especially in view of the moralistic 'burden of history' of chaplains, they will gladly adopt this role of creating a free space 'beyond good and evil'.

This section has tried to explain the weakness of the practical connections between RJ and prison chaplaincy. In the remainder of this

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[6] Zehr, H. (2002). *The Little Book of Restorative Justice*. Intercourse: Good Books, pp. 16-17.

article, I will further explore the paradox I described between these weak practical links and the strong theoretical convergence between pastoral work and RJ.

3. Strong ideological connections

3.1 Law and morality

In an interview in the free Flemish Sunday newspaper *De Zondag*, the Belgian atheistic-humanistic philosopher Etienne Vermeersch criticized the Belgian law which forbids holocaust denial ('negationism').[7] He argues that freedom of speech should be defended, except when certain statements deliberately incite violence. Vermeersch's argument caused strong reactions. Some people accused him of offering a moral justification of negationism. Even the newspaper gave a somewhat ambiguous rendering of Vermeersch's position by printing a page one headline (for commercial purposes obviously) which made it seem as if the philosopher claimed that holocaust denial is *morally* defensible. In the article itself, however, Vermeersch explicitly makes the distinction between law and morality and it is clear that his criticism of the anti-negationism law is all about the question to what extent the state should outlaw certain public statements of citizens. The issue is *not* whether these statements are morally right. Still, this clear-cut distinction between law and morality seems to be something hard to grasp by 'public opinion'.

Another example of the popular confusion of law and morality, an example which is in a way the mirror image of the misinterpretations Vermeersch encountered, is the reaction to Pope Francis's statement on freedom of speech in an interview he gave shortly after the attack on Charlie Hebdo in Paris in January 2015.[8] The Pontiff stated: 'We cannot provoke others, we cannot insult their faith, we cannot mock their faith'. This was immediately interpreted by some as a sign that the Holy Father was not the liberal we had thought he was, for he seemed to restrict here a fundamental liberty by pointing out the limits of the freedom of speech. In these reactions the question was not addressed what *kind* of limitation Pope Francis had in mind when he said this. There are no signs that he was pleading for a law that prohibits the utterance of insulting statements on religion. On the contrary, in the interview he drew a parallel between mocking somebody's faith and insulting somebody's mother. The

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7 Cobbaert, P. (2016, January 3). Filosoof Etienne Vermeersch pleit voor verbreding van het begrip vrijheid van meningsuiting: "Negationisme moet kunnen." *De Zondag*.

8 Pope Francis. (2015, January 15). *Press Conference of His Holiness Pope Francis, on board The Flight from Colombo to Manila*. Retrieved from http://w2.vatican.va/content/francesco/en/speeches/2015/january/documents/papa-francesco_20150115_srilanka-filippine-incontro-giornalisti.html.

comparison makes it clear that his point was a *moral* one and that he did not want the state to limit the liberties of its citizens in this respect. Rather, citizens were asked to reflect upon their self-imposed limits.

It is remarkable that this distinction is so often overlooked in public debates. The consequences of this neglect can be far-reaching. In the case of Vermeersch and Pope Francis a superficial examination which does not take into account the difference between law and morality would probably lead to the conclusion that the two men are defending diametrically opposed positions. The one is expanding the freedom of speech while the other is limiting it. If one does bear in mind the distinction, however, one finds that Vermeersch and Pope Francis may be conveying a similar (or at least a complementary) message. It would be possible to agree with both of them and to say something like: 'The state should be cautious and even reluctant to make laws that set boundaries of decency to public statements of people. Therefore, people and communities should be encouraged to develop and foster a moral sensitivity for others and an understanding of what may be insulting to others.'

The distinction between law and morality has to do with the insight that 'a good life' is something else than 'a lawful life'. The quality of one's life has to do with the realizations of certain values, the sense of belonging to a community, the preservation of meaningful relationships, the encounters with concrete others, the recognition by others. The question whether or not one has obeyed the laws of the state may play a role in 'the good life', but it will probably be a limited one. The impact of breaking the law on the quality of one's life will most probably be dependent on the effect the transgression has on the other factors of 'the good life' that were already mentioned (relationships, values, recognition, community-belonging).

Precisely this insight (that the good life is not a product of the law, but that it is dependent on other vital sources) points to a fundamental level on which RJ and prison chaplaincy meet each other. The development of RJ practices in modern societies (as distinct from RJ practices that are part of the traditional way of dealing with crime in many cultures) is related to an increasing awareness in these societies that law – in this case: *criminal* law – fails to bring about a satisfactory, fruitful and durable (in short: a 'good') answer to criminal facts. RJ precisely attempts to draw on other resources than criminal law in order to deal with crime, resources I previously associated with 'the good life' (concrete encounters, community involvement, ethical sensitivities such as a sense of righteousness, moral emotions, and so forth). The connection with chaplaincy consists in the fact that the presence of pastors, and indeed of counsellors of all religions and worldviews, in prisons also represents something 'beyond the law'. One could say that with pastors and other religious and humanistic counsellors 'civil society' enters the prisons. The different worldviews appear in the center of the penal system each with their own notions of the human

being, of righteousness and of 'the good life'. Even if these notions are often vague, paradoxical and historically conditioned, they may empower people in prison to reflect on criminal facts in which they were involved; a broadly *moral* reflection which escapes the rigor, narrowness, stigmatization and imposed nature of legal reasoning.

This parallel between RJ and prison chaplaincy (namely that they are both players on the moral field) is fundamental and, at the same time, somewhat elusive. I have taken recourse to rather equivocal expression such as 'morality' or 'the good life' in order to express their commonality. One could also say that prison pastoral care and RJ are situated on a similar distance to the criminal justice system, even if that does not mean that they are close to each other. They do share some characteristics that mark their contrast with existing criminal justice, such as unpredictability, relational thinking and a holistic view on righteousness. This is the broadest basis of the 'ideological convergence' between RJ and prison chaplaincy.

3.2 A complex narrative

Religious and non-religious worldviews involve narratives. In the case of Catholicism, part of this narrative is found in Scripture. Other narratives are written down throughout centuries of Church history or passed on as oral tradition. They often involve places, such as pilgrimage sites, or persons, such as biblical characters, canonized saints or my grandmother. Narratives are not systematic clarifications of perennial truths. They work in an exemplary way and appeal to the imagination. Contrary to what some philosophers have thought, this imaginative nature of religious narratives (and the fact that they are therefore more easily accessible to large groups of people than philosophical treatises) does not imply that they have a lower intellectual status than more abstract forms of discourse.

Consider the example of the prodigal son. It is a narrative that can be understood by six years olds. At the same time, it gave rise to an immense amount of interpretative literature, spiritual reflections and works of art. In less than 500 words the themes of (un)righteousness, conversion, mercy, jealousy and unconditional love are dealt with in all their complexity. What interests me here is not so much the admirable depth of biblical narratives, but rather the fact that they deal with topics that are also related to the human reality of crime (evil, remorse, immanent justice, punishment, the possibility of and resistance to forgiveness). The narratives do not simplify matters, but show how complex these themes are related to one another. This is not only the case in individual stories such as that of the prodigal son, but also when one 'zooms out' and looks on a larger scale, for instance, at the Old Testament prophetic writings. Let me single out only three important themes: God's moral demands to the people, the repeated utter failure of God's people to meet these demands and God's mercy towards His people despite all its failures. Notwithstanding all the tensions

between these three realities, one sees that no concessions are made when presenting them. The mercy of God does not diminish the moral demands implied in the covenant, nor does it lead to a trivialization of the sins of the people. In other words, the complexity of the moral relationship between God and His people is always upheld. Demand, failure and mercy are all three affirmed without compromises. A similar analysis can be made when discussing the teachings of Jesus Christ or the letters of Saint Paul.

A comparable complexity is found in RJ practices. If a victim of a criminal offense decides to enter into dialogue about the crime with the offender and with the wider community, this decision will probably involve a complex set of emotions and attitudes. Firstly, there will be the conviction that what happened was actually a wrong and this conviction may be accompanied by emotions of disgust, anger and indignation. Secondly, the willingness to talk and to listen presupposes the acceptance of the offender as a dialogue partner and, therefore, as a person deserving a positive treatment and a certain measure of trust. Thirdly, the readiness to discuss events that were particularly painful for the victims implies that they are prepared to show themselves as vulnerable to somebody by whom they were already hurt. Once again, the relationship between these conflicting attitudes and emotions is complex, and this complexity is not 'simplified' by simply giving up any one of them; the willingness to enter into dialogue does not cancel the negative judgement about the wrong that has been committed.

Once again, the parallel between RJ and pastoral care is profound, but rather vague. I connected the Christian narrative with attitudes and emotions involved in RJ practices by means of the umbrella term 'complexity'. However, despite the vagueness, this parallel can have real effects on the relationships between pastoral and RJ practices. This can work in two ways. The complexity of the biblical narrative may facilitate a Christian appreciation of RJ. By virtue of their familiarity with stories such as that of the prodigal son, pastors may be able to recognize in 'secular' RJ practices the strange tension between condemnation of evil and the willingness to relate to the evildoer. They may positively appreciate the unexpectedness of this willingness and are ready to accept that such unexpected future-building choices are often shocking to others (cf. the reaction of the elder son in the parable, parallel to the skepticism of certain organization for victim's rights towards RJ). I wish to emphasize here that I did not want to make a comparison between biblical narratives and RJ processes. The sole goal of these reflections is to explain the feeling of affinity with RJ among prison chaplains. This affinity is also felt on the other side. Scriptural and other complex narratives on evil and its aftermath may be inspiring for people involved in RJ practices. I only mention one example here. For many years, victims and offenders of politically motivated violence in Italy

met each other on a regular basis.[9] One of the methods that were used during the encounters was the joint reading of texts, not only from the Bible, but also from classical literature. These texts, which were not chosen because of their 'divine inspiration', but because they made available in a condensed form centuries of human experience, could allow people to put into words the complexity of what it means to be a victim and an offender communicating with each other.

3.3 Inhumanity in prison

Chaplains experience in their everyday work in prisons the devastating effects of the prison system on inmates. Despite all the efforts to reform prisons and to make them a more humane place, they remain 'total institutions' where individual identities are damaged and personal autonomy is reduced to a pathogenic level.[10] Chaplains have a strong 'contrast experience' as they observe these debilitating consequences of prison life while at the same time believing in the indestructible dignity and respectability of the human person. This belief is biblical, but it is even more emphatically expressed in the social teaching of the church.[11]

Out of this contrast experience grows a sympathy for all attempts to create alternatives to the existing systems of criminal justice and mass incarceration. Of course not all alternatives are equally valid for Christian chaplains. The criterion is, in the end, the extent to which a new model truly brings about righteousness in the biblical sense of the word. This righteousness is not primarily about following certain rules and procedures, but rather about 'making the crooked straight' again (Isaiah 40:4), about repairing what has been damaged and restoring both victims and offenders to their original dignity. It is clear that RJ offers for chaplains a promising alternative to the misery-increasing system of detention.

How far chaplains should go in their critical attitude towards criminal justice as it exists and in their sympathy for a new model that is more in line with biblical righteousness, is an open question and a matter of dispute among Christians.[12] Some would plead for a humanizing reform of the existing system. Others would consider such humanization process unrealistic and, to make it even worse, a legitimization of the prolongation of a system that is intrinsically inhuman. The Dutch criminologist Herman

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9 Bertagna, G., Ceretti, A., & Mazzucato, C. (2015). *Il libro dell'incontro. Vittime e responsabili della lotta armata a confronto*. Milano: Il Saggiatore.

10 Cf. Goffman, E. (1961). *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates* (1st edition). Garden City, N.Y.: Anchor Books / Doubleday.

11 Pontificia Commissio a Justitia et Pace. (2004). *Compendium of the Social Doctrine of the Church*. Città del Vaticano: Libreria editrice Vaticana.

12 Ballot, J. J. (2008). To reform or to abolish? Christian perspectives on punishment, prison, and restorative justice. *Ave Maria Law Review*, 6(2), 481–511.

Bianchi, for instance, defended an approach to crime based on the biblical concept of *tsedeka* and completely rejected the punitive system of criminal justice, which he considered as an aberration in history.[13] But whether chaplains end up being abolitionists or reformists, in both cases they will be drawn to RJ as an approach which strongly converges with the Christian narrative, as was explained before.

4. Weaker (but real) practical connections

Apart from the strong ideological convergence of prison chaplaincy and RJ, whose grounds were discussed above, there are weak but real connections between them on the practical level. I do not claim to present an exhaustive list here of possible practical links. Rather, I limit myself to my own experience as a prison chaplain and I ask the questions which pastoral practices could be called 'restorative'. I will briefly highlight four relevant points.

4.1 Justice and sanctuary

I already mentioned the popular description by chaplains of their own work in terms of creating a 'sanctuary'.[14] This 'free space' is traditionally a place (often a place of worship) where offenders could flee in order to escape persecution or immediate reactions of retaliation. This does not mean that they would escape justice altogether. Quite on the contrary, the safe haven ideally allows offenders and their victims to enter into dialogue with each other in order to arrive at an arrangement by virtue of which both victims and offenders can have the feeling that justice has been done.[15] Hence, the connection between sanctuary and RJ is clear, even though there are many different ways in which RJ initiatives presuppose a space that is physically and emotionally safe for those involved. The kind of sanctuary that is offered by chaplains to prisoners is probably one of the free spaces that may allow RJ to happen.

The contribution of this sanctuary to RJ may be described in the following way. People in prison generally have the experience of massive accusation and rejection. I mentioned above the plethora of people who want to point out the prisoner's responsibility. In a joint effort, prison staff, relatives, judges, and through the media also the whole of society reject the offense – and in one and the same breath also the offender, for the pain inflicted by punishment makes it clear that the rejection is also directed

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13 Bianchi, H. (1994). *Justice as Sanctuary: Toward a New System of Crime Control.* Bloomington: Indiana University Press.

14 De Wit, T., Vries, R. de, & Eijk, R. van (Eds.). (2015). *Een heilige en veilige plek. Vrijplaats en spiritualiteit in de geestelijke verzorging bij justitie*. Nijmegen: Wolf Legal Publishers.

15 Bianchi, H. (1994).

at the person and not only at the act. However, contrary to popular belief, these pointing fingers seldom bring about the desired effect of 'making criminals feel that they have done something wrong'. On the contrary, this mass accusation mostly has the exact opposite effect. It brings about rebellion, self-defense and self-justification in the accused. And this defensive reaction is understandable and even justifiable, because the accusation is often imprecise, full of hatred and with little consideration for alleviating circumstances. This is one of the reasons why the prison system and the criminal justice system as a whole are not always fertile grounds for restorative initiatives to grow. These environments stimulate inward looking attitudes and concerns (self-preservation, self-defense, self-pity), rather than the outward going personal qualities (a sense of responsibility for others, trust, empathy) that are crucial for RJ.

Contact of inmates with chaplains may be an occasion for a temporal exemption from the pointing fingers of accusation. By 'giving' people in prison 'a break' and offering them the occasion to tell their own story (without answering the story with judgement or suspicion), chaplains may allow some prisoners to discover *their own* sense of responsibility and *their own* views on good and evil in relation to their own acts. In that sense, pastoral care in prison may *indirectly* contribute to RJ by helping to create some of its preconditions. Acknowledging this mean acknowledging the paradoxical fact that when one forces people to relate to external realities (law, victims, society) they will probably become more self-centered, whereas giving people some breathing space for themselves will often resuscitate in them their own relational orientation, which will direct them in one way or another towards these external realities.

4.2 Relational and contextual thinking

Chaplains will not always speak about 'sin' in the context of their work. The old concept has certain connotations that render its use problematic in a pastoral context. The main objection would be that the notion used to play an important role in the classical guilt-inducing approach of prison chaplaincy. In earlier times, it was believed to be beneficial for both the prisoner and society if the sinfulness of the offender was highlighted. This would pave the way for conversion, forgiveness and, indeed, reparation. In that sense, chaplains of these earlier times would have explained that their work eventually leads to a kind of *restoration*, even if chances are small that they would have used that term.

It is always wise (and Catholic) to adopt a critical attitude towards the tradition, to filter away what is suffocating in order to bring to light more clearly what is liberating in that tradition. In the case of the concept of sin, it is the classical prayer *Confiteor* which may help us to get a better understanding of what in the concept of sin is worth preserving. There has been a strong emphasis on the *mea culpa* in the tradition (*mea culpa, mea*

culpa, mea maxima culpa, while striking the breast). For that reason, one could wonder what effect such a prayer can have in a secular penitentiary context where the whole environment is shouting: *tua culpa, tua culpa, tua maxima culpa*. In the previous section I have tried to describe the self-enclosing effects this has on people. It is worthwhile, however, to look further and to focus on the whole context of the *Confiteor*, which is fundamentally relational. The sins are confessed not only to God, but also to the brothers and sisters and it is their prayer that is asked.

Apart from the question whether the concept of sin should be used explicitly in the pastoral practice, it is clear that chaplains should understand the tradition of sin-talk because this keeps their eyes open for the relational aspect of all wrongdoing. In view of that rich theological tradition, it is natural for Christian pastors to think of the victims whenever an offender is speaking about his or her offense. This does not mean that prison chaplains need to turn their pastoral counselling into a victim-awareness program (which could be a subtle return to the ancient guilt-inducing pastoral work). An appreciation of the relational character of sin will only lead to the fact that the victim (and, indeed, the whole relational context of the offender) is 'on the pastor's mind' and *can* become a topic in the pastoral interaction. Once again, the link between chaplaincy and RJ is indirect, but it can lead to more direct involvement, for instance when pastors recommend participation in existing RJ programs, something they will most probably be inclined to do whenever the opportunity arises.

4.3 Prophetic pastoral work

There may be discussion about the extent to which chaplains have to act as prophets.[16] Is it part of their 'core business' to speak and act critically in relation to the places where they work (prisons, armies, hospitals, and so on)? The answer to that question may vary according to the context where pastors work. In general, there are good reasons for affirming the importance of the prophetic role of chaplains.[17] Scripture and the whole of the Christian tradition contain abundant indications that merely speaking about God's righteousness or performing ritual acts of worship without addressing the real issues of justice in the place where one stands simply contradicts the Christian faith.

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[16] Dillen, A., & Vandenhoeck, A. (2011). *Prophetic Witness in World Christianities: Rethinking Pastoral Care and Counseling*. Münster: LIT Verlag.

[17] The German pastoral theologian Doris Nauer distinguishes between three different roles of the pastor: mystagogical-spiritual, psychological-ethical, and diaconal/prophetical-critical. Nauer, D. (2009). Profetisch-kritisch handelen vanuit het perspectief van de pastorale zorg. In A. Dillen & A. Vandenhoeck (Eds.), *De moed om te spreken en te handelen*. Profetisch pastoraat. Antwerpen: Halewijn, pp. 132-172.

In the case of prison chaplaincy, there is the already described contrast-experience between on the one hand the inhuman aspects of imprisonment and on the other hand the social teaching of the Bible and the church. Whenever this contrast-experience is translated into concrete acting and speaking in defense of the human treatment of prisoners and a more just system of criminal justice, the pastor is acting prophetically. The strong ideological convergence between Catholic prison chaplaincy and RJ (and other alternatives to current ways of dealing with crime) is then turned into a concrete practical support of restorative practices. This can take on many forms, such as the promotion of RJ practices in the institution where one works, interventions in the public debates on crime control, advocacy for prisoner's rights on the political level or the theological elaboration of classical concepts (sin, forgiveness, penitence) in ways that may be inspiring for current restorative practices. All of this is pastoral work.

An example of such prophetic speech is the address Pope Francis gave to members of the International Association of Penal Law in 2014.[18] In what seemed an exercise in critical criminological thinking, the Bishop of Rome criticized vengeful penal populism, the death penalty (and the 'hidden death penalty' of life imprisonment), inhuman circumstances of incarceration and the current social bias of the criminal justice system, which 'is like a net that catches only the little fish, while it leaves the big fish free in the ocean'. Even though the Pope did not mention RJ, it is clear that his own criminological thinking shares many concerns of the RJ movement and pushes into the direction of a wider dissemination of restorative practices in criminal justice.

4.4 Celebrating the liturgy

When reflecting upon the practical relationship between prison pastoral care and RJ, one spontaneously thinks of those situations in the work of chaplains that resemble most the communicative arrangement of RJ practices. These practices are characterized by horizontal, non-hierarchical relationships and open conversational settings that leave room for free expression and unpredictability. Hence, our first thoughts usually go to face to face conversations between the pastor and individual prisoners or to 'talking groups'.[19] Liturgical celebrations would not usually be seen as

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[18] Pope Francis. (2014). Address of Pope Francis to the Delegates of the International Association of Penal Law. Rome. Retrieved from http://w2.vatican.va/content/francesco/en/speeches/2014/october/documents/papa-francesco_20141023_associazione-internazionale-diritto-penale.html.

[19] One of the interesting developments within the Catholic chaplaincy service of last decades is the project *Tralies uit de weg* (*Away with Prison Bars*). The project, which started in the prison of Bruges and which is active now in several Flemish prisons, organizes talking groups with people from inside and outside the prison. They

contributing to restorative processes. Because of the (literally) hierarchical nature of the Catholic liturgy and the fixed pattern of its 'rubrics', it even seems completely alien to RJ settings.

It can be argued, however, that some of the features of liturgy do make it a *locus reparationis*, a place that may inspire people to consider steps of restorative action. I will mention three of these features, though I am sure other pastoral workers would be able to come up with more and richer examples. *Firstly*, the Christian narrative is told during the liturgy. Ideally, it is communicated in such a way that it is unfolded in all is richness and that it really makes sense to the particular group of people that is gathered in that specific place. The complexity and accessibility of the Christian narrative may bring about change in the lives of people in prison and in their views on life (and more specifically on guilt, punishment and forgiveness). In the same way that the Christian narrative may cause pastors to sympathize with RJ, it may inspire offenders to believe in the possibility of reparation.

Secondly, the liturgy is to a great extent a ritual. Rituals are often grafted on existential realities that mark the boundaries of life or that are so close to who we are that they are difficult to grasp (birth, death, love, friendship, the passing of time,). It is no surprise then that criminal punishment is heavily ritualized, but only at the beginning of the process, when a sentence is pronounced in the courtroom. There is a parallel here, of course, with the ancient practice that Christians who sinned gravely entered for some time the *order of penitents*, a group which was sometimes not allowed to fully participate in the liturgical celebrations. Apart from this positioning (partly) outside the liturgical community, there were other ritual markers (such as clothes) that set this group apart from other Christians. One of the crucial differences between this antique Christian tradition and the modern 'penitentiary' practice of sending people to prison is that the Christian penitent was allowed back into the community in a ritual act. No such official reintegration rituals exist in the modern prison system. It would be my hypothesis, to be tested in further research, that part of the power of RJ is precisely is a ritualistic aspect, the fact that in a condensed meaningful moment something that was disruptive in life can be brought to a kind of closure. If this is true, then the sensitivity for ritual which prisoners foster (or rediscover) during religious services throughout their detention, can make them appreciate better the rejuvenating potential of RJ.

Finally, the liturgy in prison creates something of an *extraordinary community* of people who do not always share a lot with one another.

discuss existential themes that make it possible to bridge the gap between 'inside' and 'outside'. It connects people in prison more strongly to the outside world and often reveal to those outside that they are the brothers and sisters of the ones inside (and not just those who come to visit them out of pity).

The 'community' of inmates in a prison is not a group of people who have chosen to live together. Sometimes this aspect of 'forced choice' is even stronger in the prison chapel because the people who go there do not always belong to the same subgroup in prison or to the same stratum of the prison hierarchy. The super-diversity in religious services may be in some cases instigate a learning experience and make people realize that maybe the most extraordinary of all communities is possible: that of victims and offenders talking to each other.

5. Conclusion: Challenges and Balances

I have spoken here from my own perspective as a prison chaplain in Belgium. There are probably places in the world where Catholic chaplains are more strongly involved in RJ practices as a normal part of their work. In that sense, the structure of this article reflects the factual relationship between RJ and pastoral care in my very particular context. This relationship is marked by a gap between, on the one hand, the good will and sympathy I have towards RJ and, on the other hand, the separation between my own work and the work of RJ practitioners. This gap is a fact and my description of it should not be seen as a defense of pastoral non-involvement in RJ programs. The possibility a more practical rapprochement between pastoral work and RJ is an enduring challenge for the chaplaincy service.

When dealing with this challenge an important tension is ever present in the background. I already mentioned critical attitudes towards the prison system, shared by many prison chaplains, which can be reformist or abolitionist. Chaplains who adopt this critical attitude in either form are convinced that raising their prophetic voice is part and parcel of their pastoral work. At the same time, they encounter prisoners in a system which they criticize and sometimes even condemn. One immediately sees that a serious tension can arise between the prophetic role of the pastor and roles which are more related to personal counselling. Several dangers exist here. The prophetic pastoral worker may fear that an exclusive focus on personal care for inmates may lead to an implicit affirmation of the *status quo* in the criminal justice system. Chaplains can even be used by the system to keep the prisoners calm so that there is no revolt and the system itself can keep up the appearance of being human after all. Another danger is the exact opposite of this systemic encapsulation of prison chaplaincy. The condemnation of the prison system and the struggle for alternatives can become a goal in itself. The openness towards the narrative of inmates can be destroyed when chaplains blame everything on 'the system' and insist that this system needs to be changed before any act of 'charitable' help for individuals is provided. The dangers that are sketched here are, of course, caricatures, but they point to the fact that a balance is always needed between the prophetic perspective on the system as a whole and the care for the needs of individuals.

When considering involvement in RJ practices, chaplains will have to look both at reality and at what is desirable in light of the Christian narrative of liberation from slavery. They will have to accept that they are sent in the world of criminal justice, which is in many respects a horrible place, which they cannot change at will. In this place they are called to be there for offenders, who are in the paradoxical position of having done wrong to victims and of having become themselves some kind of 'victims' of a merciless system. At the same time, chaplains will have to remain faithful to *God's* righteousness, which can never be separated from mercy, a faithfulness which will keep on guiding them in the direction of a stronger cooperation with RJ and of advocacy for a more restorative system of criminal justice. The two roles of the chaplains, the counsellor and the prophet, are not opposed to one another. They both have a single root: the service to the dignity of people in detention.

Part III:
Contexts

Chapter 12
Global Facts and Trends
A Short Overview

Ryan van Eijk

1. Introduction

The simple and harsh reality is that a majority of the prison systems in the world does not function at the level of the United Nations' Standard Minimum Rules for the Treatment of Prisoners. The reasons for this situation are manifold:

1) prison conditions which make prison an unsafe and unhealthy place, like overcrowding, poor sanitation, inadequate access to food or potable drinking water, poor medical and psychological care;
2) mistreatment and even abuse of prisoners by prison staff or other authorities; and
3) inadequate legal protections leading to incarceration.

In many cases these problems are an outcome of broader political, economic and social problems. However, in some countries international obligations and standards regarding the treatment of prisoners are deliberately disregarded. Unfortunately, all this is old news but this does not mean that there are no developments or trends in the world of prison systems. We will have a closer look at the global figures and several important global issues as can be seen currently. Even when figures and statistics are outdated before they have been printed they do show developments and trends. And so it is useful to present some statistics and figures regarding imprisonment. Also some general trends are presented, which are supported by recent analyses of specialised organisations such as Amnesty International, the Centre for Prison Studies, and Penal Reform International in London.[1] Next to their publications we use some other recent publications on relevant issues in imprisonment.

2. Prison population

The world prison population has increased in the last 10 years approximately by some 10 percent. However, the worldwide report of

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[1] Penal Reform International (2015). *Global Prison Trends 2015*. London; Amnesty International (2015). *Amnesty International Report 2014/15. The State of the World's Human Rights*. London; see also the very insightful analysis in a recent article by Byrne, J.M., Pattavina, A. & Taxman, F.S. (2015). International Trends in Prison Upsizing and Downsizing: In Search of Evidence of a Global Rehabilitation Revolution, in: *Victims & Offenders*, 10:4, pp. 420-451. DOI: 10.1080/15564886.2015.1078186.

the Secretary-General at the 13th UN Congress on Crime Prevention and Criminal Justice in January 2015 presented in general less crime in 2003-2013 (except drug related offenses). More than 10.2 million people were held worldwide in penal institutions in 2013: 144 per 100.000 people. In general research shows that the increase in the certainty of punishment has more positive effects on crime rates than the threat of severe punishment. However, many countries see a solution in the latter remedy unfortunately, and pre-trial detainees are in many cases the majority. There is also an increase of prisoners serving life time imprisonment, partly as alternative to the death penalty. The percentage of female prisoners is worldwide about 6.5 % (2013), lowest levels of imprisoned females are in Africa and Western-Europe, the highest in Asia. Drug related offenses are high among women. Compared to male detainees a higher percentage of women are first-offenders and recidivism is lower. The rates of imprisoned children decreased worldwide, but was at the same time increasing in some parts of Asia, Oceania and the Americas. In many cases children stay with their parent -mostly the mother- in prison. The number of elderly prisoners is rising (longer sentencing) and so are the problems which accompany aging. In most cases prisons are not equipped for children or elderly. Because of migration and globalisation, the group of foreign national prisoners (FNP) is rising. A recent study shows that about 5% of the prison population worldwide is a FNP (in the Middle-East even 33%). FNP's are a vulnerable group and experience difficulties regarding culture, language, rights and family contacts.[2] The disproportional number of detainees from (racial, ethnic, religious, indigenous) minority groups in many countries is well known as is the disproportional presence of people with mental problems.

3. The figures

Looking at the figures as presented by the International Centre for Prison Studies one can see huge differences between the states.[3] In most countries one can see an increase in prisoners, and in many cases this increase is bigger than one should expect regarding the countries' population growth. Sharp rises can be seen in Latin America and Oceania. The reasons of the changes -whether these changes mean increase or decrease- can differ enormously. Table 1 shows the figures from the top 10 countries worldwide regarding the highest prison rate per 100.000 people in 2005 and in 2015. The outcome is remarkable for there are big, powerful countries like the USA and the Russian Federation and very small countries like St. Kitts & Nevis and the Seychelles on the list. The table makes clear that figures as

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2 van der Meulen, F.B.A.M. (2015). *Detained abroad: Assisting Dutch Nationals in Foreign Detention*. 's Hertogenbosch: Uitgeverij BOXPress.

3 International Centre for Prison Studies (2015). *World Prison Population List, 10th edition*. See Appendix to this article.

such do not say much as this table says nothing about the absolute amount of incarcerated people in the mentioned country or the reasons for these figures. So it is necessary to look further to understand what the reality behind these figures is. For example, the USA is a rich country with a strong and very well equipped legal system with a punitive climate, while Rwanda is rather a poor country where the 1994 genocide atrocities are the major reason for being in the list. And when we talk about the USA we are talking about 2,239,751 incarcerated people, in St. Kitts & Nevis 415 people are involved.

Table 1.
Top 10 countries with highest prison rate per 100,000 people, 2005 and 2015

Ranking	Country & Rate 2005	Country & Rate 2015 (rate 2005)
1.	USA 714	USA 716 (714)
2.	Russian Federation 532	St Kitts & Nevis 714 (415)
3.	Belarus 532	Seychelles 709 (186)
4.	Bermuda 532	Virgin Isl. USA 539 (490)
5.	Palau 523	Barbados 521 (367)
6.	Virgin Isl. USA 490	Cuba 510 (487)
7.	Turkmenistan 489	Rwanda 492 (NA)
8.	Cuba 487	Belize 476 (420)
9.	Surinam 437	Russian Fed 475 (532)
10.	Cayman Isl. 429	Virgins Isl. UK 460 (215)

NA = Not Available

There can be many reasons why a country is scoring high. This explains why the rankings can change in relative short time. A socio-political change like a political revolt, the collapse of state authorities (Libya) or a general amnesty can influence the rate or the amount of prisoners dramatically. The low rates per 100,000 population in populated countries like India, Japan, Nigeria and Pakistan are remarkable.

4. Overcrowding

For many years and in many countries overcrowding has been a serious and major problem in prisons.[4] Overcrowding has many reasons: financial governance (a lack of investments), social circumstances (steady increase of inmates), punishment policy (long sentences) or the change of this policy (war on drugs or longer and harsher sentences), problems in the justice system (lack of money and/or investments resulting in long pre-

[4] In January 2015 112 countries had more prisoners than capacity, of these 29 had overcrowding rates between 150-200%, and 21 even above 200%. PRI 2015, p. 8.

trial periods), unexpected socio-political changes leading to sudden increase of prisoners (in situations like genocide, illegal migration, political upheaval), poverty (lack of money). It is not very surprising that problems of overcrowding can be observed in countries which undergo rapid social changes, significant transitions of any kind or are in a post-conflict situation and in the process of state building. In general, one can reduce the reasons to three main areas which influence the prison situation directly and enormously: 1- problems of governance, 2- problems in the criminal justice system and 3- a weak economy. The definition of overcrowding is difficult and complex for it can appear in many different aspects of prison life: food, hygienic facilities, space available etc. That is also the reason that "[A]pproaches to the assessment of overcrowding under international and national laws and standards amount roughly to a "totality-of conditions" test which essentially provides for a multi-dimensional scale. This scale includes "core conditions" of adequate circumstances of detention/ imprisonment, including the space available for a prisoner."[5]

As said, overcrowding is a worldwide problem. In Europe we see a mixed picture, meaning that there are countries which do not know the problem at all (like Netherlands, Germany) and at the same there are countries which have known the problem of overcrowding for decades (like Belgium, France and Italy). In North-America the USA are known for overcrowding, and also in Latin-America it is almost everywhere. In Africa overcrowding is wide spread and often even independent from prisoner rate, and in Asia the problem is also well known in many countries.

As the reasons of overcrowding are manifold so are the effects of overcrowding. Overcrowding has a negative impact on all imprisonment conditions and intended consequences of imprisonment. "Overcrowding results first of all in a restricted living space and associated losses of privacy and human dignity (which will in turn affect trust and confidence of prisoners in the legitimacy of prison regimes). Then, overcrowding may result in a reduction of general services to be provided in a prison facility in order to comply with standards set for access to medical treatment, sanitary equipment and educational, training or rehabilitative programs".[6] The final result of overcrowding can be generally summarised in: less security, but more violence and more stress.

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5 Albrecht, H-J. (2012). *Prison Overcrowding - Finding Effective Solutions. Strategies and Best Practices Against Overcrowding in Correctional Facilities*. Max Planck Institute for Foreign and International Criminal Law. p. 6. (Original: Strategies and Best Practices Against Overcrowding in Correctional Facilities, United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders (UNAFEI), March 2011. Reprint with permission from UNAFEI, April 2012). http://www.defensesociale.org/xvicongreso/usb%20congreso/1%C2%AA%20Jornada/02.%20Panel%201/P1_albrecht%20-%20prisonvercrowding_2012.pdf

6 *Idem*, p. 33.

According to Albrecht alternatives to imprisonment such as fines, day fines, community service, electronically monitored house arrest and probation/ suspended sentences have been incorporated into systems of criminal sanctions successfully during the last decades. Early release on parole is also an important instrument in most correctional systems.[7] Amnesties, however, are not very successful in the long run for in many cases they do not change the causes of overcrowding.

Even when the spreading and dimension of overcrowding suggest differently the strategies to reduce overcrowding are numerous: "the use of alternatives to penal prosecution (diversion), the recognition of restorative justice approaches, the use of traditional justice, decriminalization, reducing the numbers of unsentenced prisoners through eff active co-operation between the police, the prison services and the courts to ensure speedy trials and effective case management, recognition of the last resort principle, better access to defence councils and greater use of paralegals in the criminal process, setting targets for reducing the prison population, increased use of proven effective alternatives, imposition of sentences of imprisonment only for the most serious offences and as a last resort and for the shortest time possible, consideration of prison capacity when determining decisions to imprison and the length and terms of imprisonment, implementation of early and conditional release schemes, promotion of promising models for replication, promotion of regional and international Charters on Prisoners' Rights, pushing the political will to change and reform."[8]

A new and in a certain way revolutionary solution for overcrowding can be found in Europe where two countries (Belgium and Norway) 'exported' inmates because of overcrowding to a neighbouring country with prison overcapacity (The Netherlands).[9] However, some criticise this 'trade in prisoners' by pointing at the disadvantages for the involved inmates like language problems, culture differences between prison staff and prisoners, and extra obstacles in visits, contacts with family, and reintegration.

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7 *Idem*, p. 35.

8 *Idem*, p. 35.

9 "Dutch Justice Minister Fred Teeven defended the deal in simple economic terms: "In Norway there is a capacity shortage, and right now we have a surplus," he said. Accepting foreign prisoners is expected to save more than 700 Dutch jobs, and it's been done before: In a particularly interesting example of European cooperation, 550 Belgians are currently serving their sentence in a Dutch jail."
https://www.washingtonpost.com/news/worldviews/wp/2014/09/10/the-worlds-most-humane-prison-system-is-so-overcrowded-its-now-sending-criminals-abroad/

5. Privatisation

This more or less economic 'trade in prisoners' leads to the issue of prison privatisation. According to Mason's study[10] on this issue supporters of privatisation promise low-cost, quality and flexibility. However, critics of privatisation in the US see low-quality services, negative influence on criminal justice policy for profit motives seem to increase inadequate services, unsafe conditions, detained population, and lobbying of private entrepreneurs. Despite this criticism prison privatisation increased internationally. Important companies leading in this field are GEO Group from the USA and Sodexo and G4S from the UK which run prisons but also the safety of immigration detention systems in several countries. According to Mason privatisation is an almost exclusive English-speaking idea: only Anglo-Saxon countries privatised prison facilities, however, form and extent of privatisation vary by country.[11] One can see also some initiatives for prison privatisation in Latin American countries.

The staff and management are not entirely from the private company; there are cases where the staff consists of civil servants and/or private employees but where the management is public. In many countries one can see a kind of cooperation between public authorities and private companies regarding running detention locations (Germany, The Netherlands, France, Brazil, Peru, Chile, Jamaica, Thailand, Japan).

6. Management

There is a trend to separate the functions of investigation and prosecution, execution and supervision of sanctions, and rehabilitation between different ministries. Also the Ministry of Health is more often involved in health issues in prisons. This is a trend which should be welcomed for it promotes specialized involvement and more checks and balances in responsibilities.

A less welcomed trend is the building of larger prisons as this means that detainees are placed farther from home which makes rehabilitation more difficult. Larger prisons can also be a threat to security and to individual treatment of detainees. In many cases prisons are old buildings or buildings which are not very well maintained. This in combination with overcrowding creates serious fire risks. It makes prison conditions in many countries Spartan or worse.

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[10] Mason, C. (2013). *International Growth Trends in Prison Privatization*. Washington DC: The Sentencing Project.

[11] Australia: 19% prisoners, 100% of immigrant detention; UK: 16% prisoners, almost 75% immigrant detention: USA: 8% prisoners; South-Africa and New Zealand: 11% prisoners.

Quality and quantity of prison staffing differs enormously between countries. Corruption or the danger of it is always and everywhere a security issue.

Gang violence is wide spread in prisons of the Americas, while in Europe suicide is the most important non-natural reason of death in prison.

Independent monitoring of detention places has been recognised and increased in the last decade. The ratification of the Optical Protocol to the Convention against Torture (OPCAT) and countries with a National Preventive Mechanism are increasing, though Africa and Asia are doing less well in this regard. Where prevention is lacking the situation can be summarized most of the time in two words: will and resources.

7. Technology

New technology is entering prisons, especially in high income countries in Europe, North America and Oceania. Technology takes over security tasks from staff which means less staff (close circuit television, alarm systems, electronic devices for strip searching) and reduces cash flows in prison (electronic pay systems) and corrupt transactions. Technology is also used to improve the juridical process (video hearings) and to increase prisoners' contacts with the world outside prison (video visits, internet communication). The use of electronic monitoring is also increasing.

However, it is obvious that technology creates new dangers and threats like the hacking of security systems or the use of drones to drop weapons or drugs. There is the risk that human contact will be replaced remote contact by using technology. Privacy matters are part of the concern as are the reliability of used technology. One may conclude and expect that developments in this area will continue to change prison life in the next decade.

Appendix

International Centre for Prison Studies (2015). *World Prison Population List, 10th edition*.

Country Alphabetical	Prison population total		Prison population rate (per 100,000)		remarks
	2005	2015	2005	2015	
Afghanistan	N/A	25,289	N/A	76	
Albania	3,778	4,505	105	158	
Algeria	38,868	60,000	121	162	
Andorra	61	33	90	38	
Angola	6,008	21,634	44	105	
Antigua & Barbuda	184	371	269	403	
Argentina	56,313	60,789	148	147	
Armenia	2,866	4,756	92	164	
Aruba (Netherlands)	231	235	324	224	
Australia	23,362	29,383	117	130	
Austria	8,700	8,273	106	98	
Azerbaijan	16,345	37,989	198	413	
Bahamas	1,280	1,600	410	444	
Bahrain	911	2,307	155	275	
Bangladesh	74,170	72,104	50	42	
Barbados	992	1,507	367	521	
Belarus	52,500	31,700	532	335	
Belgium	9,245	12,126	88	108	
Belize	1,074	1,562	420	476	
Benin	4,961	6,908	81	75	
Bermuda (UK)	343	271	532	417	
Bhutan	N/A	1,001	N/A	135	
Bolivia	6,768	14,770	76	140	
Bosnia & Herzegovina - Federation - Rep. Srpska	1,509 1,052	1,883 1,027	58 75	80 73	
Botswana	6,105	4,241	339	205	
Bulgaria	11,060	10,996	143	151	
Brazil	330,642	548,003	183	274	
Brunei Darussalam	463	507	127	122	
Burkina Faso	2,800	4,899	23	28	
Burundi	7,914	6,477	116	72	
Cambodia	6,778	15,397	47	106	
Cameroon	20,000	24,000	125	119	
Canada	36,389	40,544	116	118	

Cape verde	755	1,348	178	267	
Cayman Isl. (UK)	187	185	429	330	
Central African Rep.	4,168	845	110	19	
Chad	3,883	4,831	46	41	
Chile	33,098	46,718	212	266	
China	1,548,498	1,640,000	118	121	Only sentenced
Colombia	68,545	118,201	152	245	
Comores	200	c. 120	30	c. 16	
Congo-Brazzaville	918	c. 1,300	38	c. 31	
Congo Dem. Rep.	c.30,000	c. 22,000	c.57	c. 33	
Cook Isl. (NZ)	19	25	90	109	
Costa Rica	7,619	14,963	177	314	
Côte dÍvoire	10,355	7,086	62	34	
Croatia	3,010	4,741	68	108	
Cuba	c.55,000	57,337	c.487	510	
Curaçao (NL)	-	440	-	289	
Cyprus	355	905	50	106	Excl. Turkish N. Cyprus
Czech Republic	18,830	16,257	184	154	
Denmark	3,774	4,091	70	73	
Dominica	243	266	337	391	
Dominican Rep.	13,836	24,744	157	240	
Djibouti	384	750	61	83	
Ecuador	13,045	21,080	100	149	
Egypt	c.80,000	c.66,000	c. 121	c. 80	
El Salvador	12,117	26,568	184	422	
Equatorial Guinea	N/A	c. 650	N/A	c. 95	
Eritrea	N/A	N/A	N/A	N/A	
Estonia	4,571	3,186	339	238	
Ethiopia	c. 65,000	112,361	c.92	136	
Faeroe Is.	14	10	30	21	
Fiji	1,083	1,537	128	174	
Finland	3,719	3,134	71	58	
France	55,028	62,443	91	98	
Gabon	N/A	c. 2,750	N/A	c. 196	
Gambia	450	c. 1,000	32	c. 56	
Ghana	11,379	14,021	54	54	
Georgia	7,091	10,202	165	225	
Germany	79,329	64,379	96	79	
Gibraltar (UK)	19	70	68	238	
Greece	8,760	12,479	82	111	
Greenland (Denmark)	107	170	190	301	
Grenada	237	441	265	424	

Guadeloupe (France)	767	871	173	185	
Guam (US)	579	696	353	432	
Guatemala	8,307	16,336	68	105	
Guernsey (UK)	107	97	164	147	
Guinea Bissau	N/A	N/A	N/A	N/A	
Guinea (Conakry)	3,070	c. 2,600	37	c. 25	
Guyana	1,295	1,962	169	260	
Guyana (French)	691	694	358	278	
Haïti	3,519	9,936	42	96	
Honduras	11,236	12,263	158	153	
Hong Kong (China)	13,226	9,189	189	128	
Hungary	16,700	18,388	165	186	
Iceland	115	152	39	47	
India	313,635	385,135	29	30	
Indonesia	84,357	144,332	38	59	
Italy	57,046	64,835	98	106	Incl. prisoners Vatican City & San Marino
Iran	133,658	217,000	194	284	
Iraq	c.q15,000	37,014	c.60	110	
Ireland	3,417	4,068	85	88	
Isle of Man (UK)	62	97	83	112	
Israel	13,603	17,279	209	223	
Jamaica	4,744	4,201	176	152	
Japan	73,734	64,932	58	51	
Jersey (UK)	168	163	185	165	
Jordan	5,448	6.066	106	95	
Kazakhstan	58,300	48,684	386	295	
Kenya	55,000	52,000	169	121	
Kiribati	81	118	80	114	
St. Kitts & Nevis	195	330	415	714	
Korea Rep.	57,902	48,497	121	99	
Korea (North)	N/A	N/A	N/A	N/A	
Kosovo	-	1,691	-	93	
Kuwait	c.3,700	4,179	c.148	137	
Kyrgyzstan	19,500	9,828	390	181	
Laos		4,020		69	
Latvia	7,796	6,117	337	304	
Lebanon	5,375	5,094	145	118	
Lesotho	3,000	2,564	143	121	
Liberia	N/A	1,930	N/A	46	
Libya	11,790	5,328	207	81	

Liechtenstein	18	9	53	24	Some imprisoned in Austria
Lithuania	8,063	9,729	234	329	
St. Lucia	460	568	287	317	
Luxembourg	655	656	144	122	
St. Maarten (NL)	-	180	-	458	
Macau (China)	875	1,083	197	191	
Macedonia (F Yug Rep)	1,598	2,515	78	122	
Madagascar	c.19,000	18,507	c.109	87	
Malawi	8,566	12,236	70	76	
Malaysia	43,424	39,144	174	132	
Maldive Isl.	1,098	994	414	307	Sentenced prisoners only
Mali	4,040	5,817	34	36	
Malta	278	610	72	145	
Marshall Is.	23	c. 32	44	c. 58	
Martinique (France)	671	918	169	223	
Mauritania	1,185	1,602	41	45	
Mauritius	2,565	2,663	214	202	
Mayotte (France)	161	185	85	85	
Mexico	191,890	246,226	182	210	
Micronesia Fed. States	39	90	34	80	
Moldova	10,729	6,710	297	188	
Monaco	13	27	39	73	Some imprisoned in France
Mongolia	6,400	8,193	246	287	
Montenegro	-	1,297	-	208	
Morocco	54,200	72,000	174	220	
Mozambique	8,812	15,249	50	65	
Myanmar (Burma)	c.60,000	60,053	c.120	120	
Namibia	4,814	4,314	267	191	
Nauru	6	26	48	277	
Nepal	7,132	14,936	29	48	
Netherlands	19,999	13,749	123	82	
Neth. Antilles (NL)	780		364		
New Caledonia (France)	286	402	122	152	
New Zealand	6,802	8,597	168	192	
Nicaragua	5,610	9,168	100	153	
Niger	c.6,000	6,899	c.52	42	
Nigeria	39,153	54,144	c.31	32	
North. Mariana (USA)	136	162	173	264	
Norway	2,975	3,649	65	72	

Oman	2,020	1,403	81	61	
Pakistan	86,000	74,944	55	39	
Palau	103	62	523	295	
Panama	10,630	15,126	354	411	
Papua New Guinea	3,302	3,467	66	48	
Paraguay	4,088	7,901	75	118	
Peru	32,129	61,390	114	202	
Philippines	70,383	108,305	94	111	
Poland	79,087	83,610	209	217	
Polynesia French	327	427	131	152	
Portugal	13,498	14,264	128	136	
Puerto Rico (USA)	15,046	11,452	386	311	
Qatar	570	c. 1,150	95	c. 60	
Reunion (France)	1,054	1,138	137	130	
Romania	39,015	33,015	180	155	
Russian Federation	763,054	681,600	532	475	
Rwanda	112,000	55,618	-	492	Incl. genocide suspects
Samoa	281	c. 430	158	c. 228	
Samoa (USA)	174	167	301	240	
Sao Tome e Principe	130	217	79	128	
Saudi Arabia	23,700	47,000	110	162	
Senegal	5,360	8,428	54	64	
Serbia & Montenegro -. Serbia -. Montenegro -. Kosovo	 7,487 734 1,182	10,266	 92 108 62	142	
Seychelles	149	628	186	709	
Sierra Leone		3,281		52	
Singapore	16,835	12,504	392	230	
Slovakia	8,891	10,152	165	187	
Slovenia	1,129	1,357	56	66	
Solomon Is.	275	321	56	55	
Somalia	N/A	N/A	N/A	N/A	
South Africa	186,739	156,370	413	294	
South Sudan	N/A	c. 7,000	N/A	c. 65	
Spain	59,899	68,220	140	147	
Sri Lanka	20,975	27,000	110	132	
Sudan	c.12,000	20,000	c.36	56	
Suriname	1,933	994	437	186	
Swaziland	3,245	3,411	324	284	
Sweden	6,755	6,364	75	67	
Switzerland	6,021	6,599	81	82	
Syria	14,000	10,599	93	58	

Taiwan	57,037	65,288	251	280	
Tajikistan	c.10,000	9,317	c.159	130	
Tanzania	43,444	36,552	116	78	
Thailand	168,264	279,854	264	398	
Timor-Leste	c.320	295	41	25	
Togo	3,200	4,060	65	64	
Tonga	116	158	105	150	
Trinidad & Tobago	3,991	3,800	307	281	
Tunisia	23,165	21,300	252	199	
Turkey	67,772	137,133	95	179	
Turkmenistan	c.22,000	10,953	c.489	224	
Tuvalu	6	12	56	120	
Uganda	c.21,900	34,940	c.89	97	
Ukraine	198,386	137,965	416	305	
Uruguay	7,100	9,524	209	281	
United Arab Emirates	c.6,000	11,193	c.250	238	
United Kingdom -. England/Wales -. North. Ireland -. Scotland	 75,320 1,275 6,742	 84,430 1,851 7,855	 142 72 132	 148 101 147	
USA	2,085,620	2,239,751	714	716	
Uzbekistan	48,000	c. 42,000	184	c. 152	
Vanuatu	93	194	44	76	
Venezuela	21,342	48,262	83	161	
Vietnam	55,000	130,180	71	145	
St. Vincent & Grenadines	397	410	339	376	
Virgin Isl. (UK)	43	138	215	460	
Virgin Isl. (USA)	559	587	490	539	
Yemen	14,000	14,150	83	55	
Zambia	13,200	17,021	122	119	
Zimbabwe	c. 20,000	16,902	c.155	129	

Chapter 13
Prison Governance
Why Moral Values Matter

Alison Liebling and Ben Crewe

The question is: what are their codes of honour? The answer to that question is that they are the codes of their circles, of those to whose opinions they defer.[1]

What sorts of prison governors lead prisons most effectively? How are personal and professional values relevant to the shape and quality of a prison? This chapter represents part of a long-term and research-based attempt to think systematically about this important question. We begin our analysis here, but hope to develop this argument, as well as our evidence for it, further in the future. We address the following questions: What values do prison governors bring to their work? Are these values changing? How and why do values matter in the leadership of prisons? As we write, Home Secretary Michael Gove (of England and Wales) is promising to increase levels of autonomy for Governors. What will this mean?

Our account in this chapter draws primarily on findings from two main studies, the first consisting of ninety long, biographical interviews with prison governors and private prison directors, Area Managers/Deputy Directors of Custody, Prisons Board members, some of the Chief Executives and Operational Directors of the private companies currently running prisons in England and Wales, and a handful of high profile interested 'outsiders' like the Directors of penal reform groups. These interviews formed part of a mainly prison-based study of 'Values, practices and outcomes in public and private sector corrections' funded by the Economic and Social Research Council.[2] The original motivation for the study was to find out whether senior managers working in public or private sector corrections had different values and motivations, and whether these differences, if found, were related to the quality of life in each sector's

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1 Mills, C. W. (1956) *The power elite,* New York: Oxford University Press, p. 284.

2 See Crewe, B., Liebling, A. and Hulley, S. (2011) 'Staff culture, use of authority and prisoner quality of life in public and private sector prisons'. In *Australia and New Zealand Journal of Criminology*, 44(1), pp. 94-115; Crewe, B., Liebling, A. and Hulley, S. (2014) 'Heavy-light, absent-present: Re-thinking the weight of imprisonment'. In *British Journal of Sociology,* 65(3), pp. 387-410 and Liebling, A., Crewe, B. and Hulley, S. (2011) 'Values and practices in public and private sector prisons: A summary of key findings from an evaluation'. In *Prison Service Journal*, 196, pp. 55-58.

prisons. We found, contrary to our expectations, that the differences between governors were not primarily related to which sector they worked in, and that many of those who worked in private sector corrections were very strongly motivated by public service and rehabilitative ideals. They had often left the public sector in frustration. We did find, however, that establishments' strengths and weaknesses often reflected the character and values of their Governors. We should say at the outset that prison governing is an underestimated and increasingly complex task and that we were highly impressed by the public spiritedness, hard work and moral intentions of our interviewees.

The interviewees included a number of individuals with whom we had contact during the course of other research projects, or who were on courses for senior practitioners on which we teach, so we already knew many of them well, and had observed many of them in the workplace. We had carried out observational studies of Governors and senior management teams before (and have since). We are, to a minor extent, part of the network of players whose world we are investigating. But we also remain outsiders, and because of this we find ourselves being told versions of events that our interviewees do not tell each other or those above them, for all sorts of cultural and professional reasons. The majority of the interviews were conducted jointly, lasted several hours, and took place between 2007 and 2010, mainly in Cambridge. We asked about a range of topics, including family backgrounds, professional histories, motivations and routes into the Service, views about the Prison Service and prison work, and various aspects of penal policy.

The second study was funded by the National Offender Management Service and was an 'update' of the original study, adding in a newer generation of Governors, and some specific questions about the changing nature and demands of the Governing role, as prisons become 'modernised', grow in size, and operate under a series of contracts including with external agencies. Some of our original interviewees were re-interviewed, and others we did not know as well were added to the sample. In total, we have conducted more than 130 such interviews. They have all been recorded and fully transcribed. We take notes throughout, and discuss our thoughts and impressions afterwards. We continue to receive a high level of access and cooperation and have been made welcome to follow up interviews with shadowing, or specific 'extra-curricular' visits to prisons.

Governors tell us that they appreciate these extended conversations. There is an intellectual challenge and opportunity for self-scrutiny in the interview process which, we are assured, is gratifying and developmental. In a small number of cases, we have been invited to continue the conversation on a second or third occasion, when significant events or changes have occurred. Our enthusiasm for the exercise means that we

are continuing to carry out interviews when opportunities arise, and regard the project as ongoing. We have published a number of papers arising from the study to date, mainly focusing on the history of prison management before and after 'managerialism'[3], life above Governors[4], the demise of the 'liberal humanitarian' prison Governor[5] and the attitudes of prison governors towards privatisation[6]. The main aims of the two studies are to describe the current Prison Service leadership, identify its moral orientation, explore the skills, styles and professional identities of the best senior managers, and to reflect on how the value base might be changing, with what benefits and what risks.

Very few sociological studies of prison governors are available, so it is difficult to move beyond the 'authoritarian-punitive' and 'rehabilitative-ideal' types present in the literature, or described by staff who worked in prisons during the post-war era. A recent study by Bennett (2015) on *The Working Lives of Prison Managers* describes the *habitus* of Governors in an era of austerity and managerialism, and outlines the ways in which self-regulation, of values, identity and emotions, has become part of the required professional skill-set of prison managers. A certain amount of acquiescence (rather than resistance) is detectable among senior managers in England and Wales in a difficult and professionally challenging climate. Other studies of prison Governors have been carried out in England and Wales[7] often by senior managers themselves as part of their further education[8]. Useful studies have also been carried out in other jurisdictions[9] which also note the changing demands of prison administration from managing mainly internal to fielding additional external pressures, including close public and political scrutiny, legal challenge, financial constraint, and

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3 Liebling, A. and Crewe, B. (2012) 'Prisons beyond the new penology: the shifting moral foundations of prison management'. In J. Simon and R. Sparks (eds.) *Handbook of Punishment and Society*, London: Sage, pp. 283-307.

4 Liebling, A. (2010) ''Governmentality' and Governing Corrections: Do Senior Managers Resist?' In L. Cheliotis (ed.) *Roots, Rites and Sites of Resistance: The Banality of Good,* Hampshire: Palgrave Macmillan, pp. 220-245.

5 Crewe and Liebling, 2012.

6 Ibid.

7 E.g. Bryans, S. and Wilson. D. (1998) *The Prison Governor: Theory and Practice*, Leyhill: Prison Service Journal Publications.

8 Ysart, L. (2015) *Governors, Morality and Operational Pressure*, MSt thesis, University of Cambridge; Sinha-Anderton, P. (2015) *Leadership Styles, Values and Attitudes of Deputy Directors in Custody in Public Sector Prisons*, MSt thesis, University of Cambridge; Cawley, K. (2000) *A Crisis of Identity: Role Conflict and Managerial Style amongst Female Prison Governors*, MSt thesis, University of Cambridge.

9 E.g. Adler, M. and Longhurst, B. (1994) *Discourse, Power and Justice: Towards a New Sociology of Imprisonment,* London: Routledge; Riveland, C. (1999) 'Prison Management Trends, 1975-2025'. In *Crime and Justice,* 26, pp. 163-203.

rising political expectations. Internal pressures also intensify as prison populations increase and diversify, and prisons grow in size.

Barak-Glanz (1981) proposed four models of prison management in American prisons which bear some correspondence to shifting Governing styles: the 'Authoritarian Model', the 'Bureaucratic-Lawful Model', the 'Shared-Powers Model' and the 'Inmate Control Model'. These approaches to prison management were primarily of interest to sociologists of control and disorder in prison. The relevant studies describe staff orientations towards prisoners, broad and shifting prison management ideologies, and the kinds of prisoner organisation to emerge under these varying forms of prison management, rather than individual warden identities and values.[10] The four styles existed along a continuum of freedom for prisoners, with the authoritarian model dominant in nineteenth century penology and characterised by:

> '[A] management style in which virtually all power was in the hands of the warden; prisoners had virtually no rights and even the guards were dependent on his favours for their job security and future promotions'.[11]

More rehabilitative approaches coincided with the bureaucratisation of power in the 1950s, whereby formal chains of command and accountability, and the limits of regulated staff power, could be wedded to prisoner welfare. Prison management took on even more democratic aspirations in the 1960s, in therapeutic communities and with the influx of treatment staff. The movement in the direction of prisoner power logically continued beyond rehabilitative power-sharing, with the tipping of the institutional balance towards gang leadership, in the 1970s.[12] Some of the risks of sharing too much power with prisoners, when uncontrolled, are being seen in contemporary low resource prisons in England and Wales.[13]

In the UK, prison governing was arguably 'traditional' and autocratic (as well as corrupt) in places during the post-war years, as well as 'rehabilitative', for example, in Borstals and some training prisons. It became more 'professional-bureaucratic' during the 1990s and onwards,

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[10] Jacobs' Stateville pays more explicit attention to individual wardens and their impact on the operation of a single prison. Jacobs, J. B. (1977) *Stateville: The Penitentiary in Mass Society,* Chicago: The University of Chicago Press.

[11] Ditchfield, J. A. (1990) *Control in Prisons: A Review of the Literature,* London: HMSO, p. 9.

[12] Ditchfield, 1990.

[13] See, e.g. Liebling, A., Schmidt, B., Crewe, B., Auty, K., Armstrong, R., Akoensi, T., Kant, D., Ludlow, A. and Levins, A. (2015) *Birmingham Prison: the Transition from Public to Private Sector and its Impact on Staff and Prisoner Quality of Life - a Three-Year Study,* London: Ministry of Justice.

in general. These changing and sometimes overlapping value orientations correspond to Rutherford's three Credos of punishment, rehabilitation and efficiency[14] with each more dominant at different periods. There were certainly versions of the negotiated order or Shared Powers model in some high security and other prisons during the 1970s and 80s.[15] Liebling has described the emergence of a new 'effectiveness' credo, which fused managerial or bureaucratic control with a 'thin' programmes-based version of rehabilitation in the 1990s.[16] The 'Inmate Control Model' has never been explicitly supported or experienced in prisons in England and Wales.[17] It is interesting to note, then, that the deliberate engagement of prisoners in formal aspects of the management of prisons (for example, in job allocations, induction procedures, assistance to new entrant prisoners and the management of violence) has been a more recent characteristic of UK prison management linked to the lowering of resources.

So there are two important dimensions to our account of prison management: the historical-cultural-ideological dimension (what are the currently accepted aims of imprisonment, how are prisoners regarded, and what kind of criminology of offending and response to it are present or articulate at a social and organisational level?) and the individual-professional (where do individual prison governors lie within the available range of ideological positions and governing styles? How many lie outside of it, and how skilled or competent are they in the translation of their professional vision into practice, via the available organisational means?). We have more to say about the second of these questions in this chapter, but we shall briefly raise relevant matters of the first kind as we proceed, as the political-ideological context inevitably shapes the type and range of governors who are selected and regarded as succeeding in the organisation.

A methodological note

The interviews, and the many observations that support them, are privileged, insightful and rewarding to conduct. The participants are operationally astute individuals who have often thought carefully about

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[14] See Rutherford, A. (1992) *Growing out of Crime: the New Era,* Winchester: Waterside Press; Liebling, A. assisted by H. Arnold (2004) *Prisons and their Moral Performance: A Study of Values, Quality and Prison Life,* Oxford: Clarendon Press.

[15] Sparks, R., Bottoms, A. and Hay, W. (1996) *Prisons and the Problem of Order*, Oxford: Clarendon Press; Liebling, A. (2002) 'A 'liberal regime within a secure perimeter'?: Dispersal prisons and penal practice in the late twentieth century'. In A. Bottoms and M. Tonry (eds*.) Ideology, Crime and Criminal Justice*, Cullompton, Devon: Willan, pp. 97-150.

[16] Liebling, assisted by Arnold, 2004.

[17] Although see Sparks et al., 1996, p. 328 on Wymott.

their professional values and identities and who express and articulate these values well and powerfully. They come with some of the difficulties of elite interviewing (the participants prepare, hold power, and defend their perspectives especially well) but also the rewards: once trust is established, they analyse their own working lives with intelligence and insight, often expressing emotions – or feelings of competitive envy – masked in their professional roles and hidden from colleagues. They do not constitute '*the* power elite'[18] but their actions have major consequences for prisoners, staff and communities. Some are especially closely linked to Government, or become so on promotion from their 'governing' governor roles. Some display the 'superior character and energy' of great leaders or public servants, while others defer to us, rather unexpectedly, both as academics and as experts on their world. So they occupy extremely important social and institutional roles, but do not always experience themselves as powerful. They did not approach us, their questioners, as in any way inferior or intrusive, but treated us as well-informed collaborators in the task of understanding their working lives and professional identities. They are also on the receiving end of increasing amounts and varieties of political power. Through their experiences of this dual position, the variation that exists between them, and what they share in common, we can discern the shape and tone of contemporary penal power and some ways of reflecting on and improving it.

Who are prison governors?

We found that prison governors were often powerful and energetic individuals with high levels of competence, resilience and good sense. They were high loyalty, hard-working individuals, with strong moral characters, who were competitively focussed on performance and success, and who had a passion for and took pride in the work they did. They were 'high on control'.

Many described themselves as working class by background, which makes them a distinctive and disproportionately self-made 'power elite', possessing considerable 'street wisdom'[19] and a strong work ethic. They were mainly male (22% of our interviewees in the first study and 14% in the second were female) and mainly described secure, traditional and unprivileged upbringings. The motives for entering prison work often combined accident, economic pragmatism, family responsibilities, and liberal aspirations. Most entered the profession wanting to make a difference. Many saw prison work as like 'social work' but with 'better

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[18] Mills, C. W. (1956) *The Power Elite,* New York: Oxford University Press.

[19] See Reiner, R. (1991) *Chief Constables: Bobbies, Bosses or Bureaucrats?*, Oxford: Clarendon, on police chiefs.

structure and leadership'. Others started their careers feeling more pragmatic than ideological, but 'grew ideologies' based on their early experiences.

Many described strong family traditions of public service, then, but most expressed a stronger personal allegiance to the newer, and 'firmer' values of accountability, decency, responsibility, structure, hard work and economic pragmatism than to the 'softer' value of prisoner 'reform'.

Almost all named older generations of leaders who had influenced them strongly, shaped them morally, and 'knocked the rough edges off', teaching them how to use authority professionally. Some had forged unlikely mentoring relationships with older liberal-intellectual practitioners who were no longer operationally dominant, but who could function in significant ways as a sounding board or moral compass. Many argued that they were motivated most 'not by pay', or even 'by promotion', but by '*influence*'. The appeal of being a prison governor was the opportunity to make a difference. For many interviewees, being the 'number one' within an establishment fulfilled a longstanding ambition. Some became more determined when they experienced attitudes or behaviour they did not like:

> I went to the gate and reported to the senior officer, and … started to ask him some questions, and he head butted me! [A few weeks later] I said, well I'd like to go back to Wormwood Scrubs.
> *So you didn't think 'this is not the organisation for me?'*
> I think it started to make me actually feel more it was the organisation that I wanted to work in.
> *Because you wanted to change it?*
> Yeah, yeah. Because I just felt it was wrong.

A morally-driven, 'robust' approach to management characteristic of the contemporary era sometimes appeared ruthless to many staff, but others thanked them for their courage. Some younger governors also showed evidence of this 'robust' style of management without such a clear moral motivation, and believed that it was culturally encouraged. Their hard-managerial methods could sometimes overshadow a wider sense of purpose: so getting the prison to 'work' was often prioritised over more aspirational goals. Whilst we were able to identify different types of governors, or governing styles[20], the overall vision of rehabilitation among contemporary governors was generally somewhat narrow and technocratic. In general, the (public sector) organisation was rewarding 'strong official

[20] See Crewe and Liebling, 2012, and further below.

performance' and 'managing risk' over 'creative rehabilitation'. Some governors (including many of the successful younger women) managed to combine highly competent management with 'decency-plus' – a well-articulated commitment to strong management *and* good outcomes for prisoners.

The question of values, then, lies at the heart of what it is to be a prison governor. Certain values almost always emerged in our deliberations: concern for the humane and careful use of power; a strong work ethic, a dislike for corruption and the abuse of power, and competitive pride in 'performance'.

Governors were not all alike, though. In our analysis of the interviews we discerned some clearly identifiable professional styles. These styles were linked to personal and biographical characteristics, and represented distinct approaches to the Governing task. They are as follows:

1. Highly skilled operational
2. Performance-plus (including 'technicists')
3. Entrepreneurs
4. Liberals – old and new varieties
5. Moral dualists
6. The alienated (who have recently left or are leaving the organisation)

The styles represented different value configurations and seemed to be linked to different kinds of outcomes or priorities, as well as effectiveness. We outline the types descriptively below. They are 'ideal types' in the sense that individuals may be on the edges of a type, or one may be a subset of another. We are using this evolving typology as a technique for thinking and describing the range of value perspectives, the direction in which prison governors are developing, and the links between professional values and outcomes at establishment level.

The first group are **highly skilled operational** managers. These were powerful, decent, courageous senior managers (usually older men), often having a powerful moral drive, who used personal authority and often a forensic grasp of detail to achieve their ends. They were 'deliverers', who were skilled at diagnosing their own cultures and driving change. They were outcomes-driven, and were sometimes perceived as somewhat clinical, but they were often very effective, especially in poorly performing or traditional prisons. They were often charismatic, and attracted a loyal following from (most) staff, although they were sometimes resisted by longer-serving or less professionally oriented staff. A morally driven 'robust' approach to management sometimes appeared ruthless to staff,

but others thanked them for their courage. They often intensely disliked – and had sometimes experienced – abuses in power – '*I always want to challenge bullying. I hate it, I react to it*' -- and so kept a careful watch on the use of it by staff. Most described working-class or impoverished backgrounds, 'unlikely educations', a trade or armed services background, and accidental or expedient routes into the Prison Service. They had often 'learned' their values and people-skills on the job, forming them in opposition to deficiencies in decency, structure, order and honesty experienced in their early exposure to prison work as officers undergoing training during a period of lack of management oversight. Others described strong values of 'hard work' and 'integrity' in their often close families, sometimes linked to a religious life, or to experiences of loss and hardship that made succeeding in work especially important. Some of this group were seen, or used by the organisation, as 'culture problem'-solvers, although their self-images and values were far more complex than this. They were highly valuable to the service, highly focussed and deeply loyal, often being sent to sort out prisons with difficult staff groups, industrial relations challenges, or a history of poor performance. Such positions often came at high personal cost. Many felt typecast, and somewhat bruised by experiences of having to 'turn around' prisons and battling local prison officer association committees.

There was a modesty, but also a strength in these governors, who had witnessed 'shortcuts' and cultural problems in their early experiences in the service that they wanted to overcome:

> Well I think I've become … I didn't used to be, but I think I've become a very confident knowledgeable person, I think I'm caring, I think I've set decent values in my life, and I set very high standards in my own personal life and which I expect other people to attain as well … I like to think I'm … somebody people can talk to and I like to help people … I'm not a big counsellor, I wouldn't say, but I do like to listen to people and help people who are talented to get on, because I think that happened to me, you know, there were people in the Service who, for want of a better word, stewardshipped my career to a certain degree, because I guess they saw something in me that I didn't know I had at the time.

Their mentors were supportive coaches, or senior and paternalistic guides, who persuaded them that, 'I don't have to follow the bad people'. As one Governor said, when describing a Principal Officer who had an influence on him in his early days, 'he was somebody who everybody respected, somebody that everybody looked up to, prisoners as well as staff, and he was just a thoroughly decent person'. They described the early part of

their careers as 'character building'. Their own experiences of unfairness, bullying, or corruption strengthened their determination to run decent prisons:

> It's made me stronger to actually, to say I'm going to fight this stuff, I'm not going to let this happen in places where I work and let people have to be put through that because it's not fair.

Their blind spots were a slightly technocratic perspective on the job, or a risk that their hard-managerial methods overshadowed a wider sense of purpose. Honing their prison morality on the job meant that they could be over-critical of what they saw as 'softer' values and over-sensitive to historically pertinent deficiencies at the expense of creativity and innovation. Their priorities were order and control, and the avoidance of social disorganisation, rather than rehabilitation or justice, but these aims were morally meaningful within their professional identities and often laid the foundations for more purposeful work with prisoners. They delivered good order and performance (internal goals) rather than outward-focused goals.

The second group represent what are often referred to as 'new-generation managers'. These were generally young and highly competent governors, who had entered the Prison Service specifically out of an interest in managing complex organisations rather than a concern for prisoner welfare. We called this group, '**Performance-plus'** governors**.** Many were decent, caring, or paternalistic; the group included some '**technicists'**, however, who were overly focused on the mechanical accomplishment of targets. This group considered their work a job rather than a vocation. They were focused on 'delivery' and detail, or 'effectiveness' rather than morality, as described by Feeley and Simon in the new penology.[21] For example:

> I've never had that motivation to work with offenders, that isn't why I'm here. […] this is a job and if it all ends today, you know, 'were pulling you out', fine, I'll go and do something else, because I've not got that vocational desire to do it, and if that's something else was, you know, driving an ice cream van then that's how I'd take it.

They were certainly committed to the decency agenda, rather than performance for its own sake, but perhaps a slightly 'thin' version of this agenda, or they enforced it in a rather brittle, authoritarian, or moralistic

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[21] Feeley, M. and Simon, J. (1992) 'The New Penology: Notes on the emerging strategy of corrections and its implications'. In *Criminology,* 30(4), pp. 449-474.

way, which was not effective with staff. Many were highly skilled and extremely hard working, but they were introverts. Their staff tended to describe them as 'business' oriented, but they nonetheless respected their drive and management skills. This group had been socialised during the 'effectiveness era'[22] so they were dedicated to the aims of reducing reoffending and protecting the public. They were also highly committed to the means of target-culture and performance management. They were concerned with process, and with their prisons and their prisoners complying with standards. They were more inward-looking than some of the other groups we describe, and were unconcerned with wider questions about punishment and society. They were somewhat uncritical of some of the limitations of offending behaviour programmes or audit processes and expressed little awareness of the impact of increasingly 'tight' policies on the experiences of prisoners.

A third, smaller group was comprised of **entrepreneurial** managers, often showing a private sector kind of 'flair' and creativity. They were energetic, innovative, 'ideas men' (they were mainly men), who were creative, provocative, highly performance driven, and committed to effectiveness and efficiency. They were more risk taking than their 'performance-plus' peers, and were more highly engaged, expressing frustration with bureaucracy and the traditional hierarchical and administrative culture of the organisation. They tended to use business language to think about and articulate their management vision. Some of this group described their work almost as 'play'. They were highly performance driven, committed to effectiveness and efficiency, and talked about 'performance managing prisoners' but they retained a prisoner-focussed orientation to the job. They saw themselves as client-driven, with prisoners as one of their key clients.

> This [job] is even better because you get … more money to play with and you can do even more things that …
> *Are you still taking risks?*
> I don't think they're risks, but I mean I do things that I think are quite interesting bits of work … with [the] voluntary sector, doing capacity building - I love doing all that type of stuff … it's less about outputs for me and more about inputs.

Their loyalties to the job, and to success, were powerful, but they did not feel especially tied to the Prison Service, and were outsiders within its culture, often able to imagine a future in a different line of work in the future. Their energy and leadership was valuable, and their means often creative.

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[22] Liebling, assisted by Arnold, 2004.

They became frustrated in the face of constraint, and described a feeling of impatience as well as disappointment when they were unable to make change happen. They often had a powerful impact on the performance of their establishment in the first year or so of their appointment, but this influence often waned dramatically when they left.

The fourth group we identified were **liberal-idealists** or value intellectuals. These 'thinker/speaker' governors were visibly humanitarian, often publishing reflective opinion pieces, speaking out at conferences or among gatherings in private, and aligning themselves with a social justice ideology. Some of their internal critics regarded them as 'moral purists (as if this was an insult!). There were different generations of such governors, and they comprised 'an endangered species' in the current cohort. There was an 'old style' of liberal gentleman governors: confident intellectual 'grandees' who had been public school educated and paternalistically dedicated to social justice and improvement. They were respected 'moral leaders' – though some governors expressed scepticism about their operational prison management skills or courage. These governors had shaped many of the generation to follow, and were revered for their ability to think morally, and make principled decisions. Some spoke out about the relative lack of humanity and compassion in the modern prison system. While they were sometimes described as 'good people who ran poor prisons', this older generation served as important career mentors, whose thoughts, philosophies and maverick spirit were missed.

We also identified a new or younger generation of liberals. They were more concerned about the wider social context than their inward-looking peers, arguing that imprisonment is a poor mechanism for dealing with social problems. They argued that while prisons should try to be benign, constructive places, they are always doomed to be destructive:

> *Do you think prisons can be benign constructive places to send people?* You are going to hate my answer to this, but no [laughs]. If you had said 'constructive' I would say yes. But of course they aren't benign, are they, you know... They are almost always harmful, you can't get away from that. The conviction itself is harmful … When we talk about things being constructive, what I'd really hope is that when [someone] gets to that low point of getting sent to prison that we can build from there, and bring him back up again.

These doubts give rise to some discomfort with their own occupation, but this discomfort was valuable in shaping some of their decision-making.[23]

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[23] See Garland's account of the prison as a 'tragic institution' in Garland, D. (1990)

In relation to prisoners, these governors used a language of care. They believed in the redeemability of all human beings, and they expressed empathy for offenders. They favoured a language of 'opportunity' over a language of responsibilisation. They were less paternalistic in their language than their liberal predecessors, and, in contrast to an earlier generation of liberals, they were unromantic about risk, criminality or dangerousness, and so did not necessarily see 'kindness' or moral improvement as the model for reform. They were also unsentimental about the use of power. Some believed that control was required not just for the sake of safety, but for care to flourish (as we argue in our analysis of some of the differences between public and private sector prisons in their approach to authority).[24] Power might save people from themselves: or support a version of 'diachronic self-control' found to be helpful in any desistance journey.[25] These governors were also unapologetic about their commitment to security and control. Some were deeply affected by their experiences of a less controlled era.

Certain principles tended to flow from the values held by these governors: for example, the minimum use custody[26], seeing the best in people, minimising the harm of imprisonment, the importance of fairness, compassion and kindness, but their compassion was focussed on the 'social' and on communities rather than on individual prisoners. They were 'hard liberals' compared to their predecessors. This reflected a collective organisational faith in a kind of 'benign Stalinism' in running prisons, because of the risks involved in more liberal approaches. Security, order and control were the bottom line ends, without which – it was argued – constructive use of time was impossible. It is notable that these practitioners generally claimed that control allowed 'the good stuff' to take place, rather than the other way round: that 'the good stuff' may promote legitimacy and therefore enable order. There was quite a widespread belief that decent outcomes may require tough means, both in terms of managing staff and controlling prisoners.

The fifth group we called **moral dualists**. These governors combined the strengths of all of the above groups, having outstanding operational skills

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Punishment and Modern Society, Chicago: University of Chicago Press; Muir, W. K. (1977) *Police: Streetcorner Politicians*, Chicago: University of Chicago Press; and further below.

24 See Crewe et al., 2014.

25 See Shapland, J. and Bottoms, A. (2011) 'Reflections on social values, offending and desistance among young adult recidivists'. In *Punishment & Society,* 13(3), pp. 256-282.

26 See King, R. D. and Morgan, R. (1980) *The Future of the Prison System*, Southampton: Gower.

but also clear moral direction. They were authentic, having clear inner convictions, clear boundaries, and high levels of personal investment in their work. They saw order, and targets, as *for other things*; and security and relationships as mutually reinforcing rather than in conflict. They seemed to embody their values in their interactions with others, showing clear awareness of emotional and relational dimensions of their work, whilst being sharp and inquiring where they needed to be. So they both respected and developed staff, treating them as a precious resource. They preferred methods of persuasion to methods of compulsion, and believed in the 'rehabilitation' of bad staff, as well as prisoners. Their inner convictions anchored and guided their actions, and gave them an authenticity in the eyes of their staff, but they did not present themselves as moral purists. They were able to hold idealism and pragmatism in healthy tension, using their principles to shape their more pragmatic daily behaviour. They drew strategically on the target culture to drive their ends while recognising its limitations. They were seen as having powerful emotional investments in their work, which they both kept in check and yet exuded in their behaviour and as 'people', with interests beyond the job. They recognised the moral and emotional aspects of managing prisons, and were sensitive to the use of power that was inherent in their work. They often empathised with prisoners' concerns, and communicated to their staff a clear set of moral and behavioural boundaries, built around a humanistic model of who prisoners were and what it was like to experience imprisonment:

> There was an incident that was quite influential for me, a lad who tried to kill himself, survived, and we found his diary. He told me to read it, because he thought I'd be interested. […] There was one section which always stayed with me, when he was suicidal, but he described this one morning when he was unlocked, and I was walking up the corridor and said 'good morning', and he had this whole section about what a difference it made to him... it was very powerful, because you suddenly realised how much influence you had as a prison officer. I tried to share [that learning experience] with new prison officers when I was a Governor, the kind of prison officer you should aspire to be: it's that bit about empathy, isn't it?

They embodied their values in their interactions with others, knowing their staff and communicating with them clearly. They were seen by staff as 'people', rather than 'just managers', with interests and hobbies beyond the job. They had a loyalty to the Service and also often to a wider cause – some kind of ethical hinterland.

Moral dualists were effective because they were highly competent, and knew their prisons. Staff tended to follow their lead, because they

were regarded as competent, legitimate and trustworthy. They struck a balance between, or tried to synthesise, reducing risk and caring for the individual, between making systems work and catering to people. They combined humanity, honesty, authenticity and loyalty with hard work, driven by a feeling of public accountability and the public interest or common good, rather than by personal ambition. They moderated their moral rigour and courage with kindness, and led prisons in a way that drew together pragmatic managerialism with 'welfare idealism'. They were the most rounded and impressive. They expressed some concerns about the unintended consequences of tough means on loyalty, support, and motivation. Outstanding prison governors modelled the good use of authority for a purpose, making clear what the moral as well as managerial priorities were in their prisons:

> I am definitely someone who is passionate about what we do, so I feel really strongly that what we do is important, that justice is really important, and that rehabilitation is really important. When I say justice, I mean things like prisoners being treated properly in prisons and decently, I feel very strongly about that ...If we don't treat people decently we can't expect them to come out better human beings ... that is what I work for. That's what motivates me. In terms of style I would say I am probably at the higher end of the controlling type governor ... I don't like to think of myself as a control freak, but I do like to know the detail, to know what is going on. I think I am probably seen as straight talking to the point of bluntness, a bit sharp sometimes, but also I suppose the flip side of that is that I am seen as reasonably switched on by those who work for me. Those who work for me seem to enjoy working for me. I am struggling with some of the [cost savings] things that are going on. Governors are still dealing with brutality, and they are still dealing with staff who don't care about prisoners.

The final category is a disparate group of '**alienated**' managers, who were often culturally self-exiled, or on margins of the organisation, or who were leaving. Some of these senior managers had become **complacent** or disillusioned**.** Some described themselves as 'faded idealists' – particularly those who entered the prison service from university with social work motives and found these quickly eroded by operational realities. Those who had retained their ideals felt somewhat marginalised and sometimes powerless to effect change within the current context. They worried about the wider context – the growing prison population, in particular – and about the lack of political voice coming from the organisational centre.

Conclusion

> What makes a good governor? I think you have to have quite a lot of strength of character, I think you have to be fairly tough. I don't mean tough in a hard way, an uncaring way, I mean don't enter into this unless you are ready to fight some battles, and go home feeling rubbish sometimes, and say some harsh things to people, because I think it is a tough job. That's the first thing. And then I think it is essential that you have some care. I think you have to actually care about what you do. The best governors are the people who do care about prisoners, and care about staff, but get that balance right. You have got to have a degree of intelligence. You have got to be able to manage the finances and the performance, and at least understand those things. (Senior manager)

Governors matter, and their personal styles and values shape the priorities as well as the professional orientations of their staff, which impacts on the quality of life and outcomes for prisoners. Prisons often reflect the personal qualities, values and professional styles of their Governors, who communicate their preferences through language, character, behaviour and body language, presence, competence and credibility, and the relationships they build with staff. Staff *anticipate* the preferences of their governors, and look for demonstrable evidence of their priorities ('is it staff or prisoners?' 'Drugs or cleanliness?'). Staff respect energy, motivation, care and operational competence, and they respond well to governors who are strong moral leaders. Governors themselves describe their work as highly demanding, frustrating, challenging, rewarding, meaningful and stimulating.[27] Those who do it best do it with high investment and moral seriousness, as well as with good humour. They recognise the job's moral complexity, and the tragedy inherent in the work that they do. One outstanding Governor described her route into the job with the following, quite commonly raised anecdote:

> 'So he asked, what is it that you are concerned about when it comes to governing?' And I said 'I have given this an awful lot of thought, and the one thing I really can't get my head around. I think I could do the finance and the performance, the operational stuff, I think I could do all that. But the one thing I don't think... is actually go to a disciplinary and sacking somebody'. I said 'I just don't know whether I could do it'. This has always stayed with me, and I have shared this with a few people. And he said to me '[name] that will

[27] Tyndall, N. (1967) *Prison People: My Life and Work in the Prison Service*, Reading: Educational Explorers.

> always make you feel bad and nervous. He said, I can tell you now that if I go into a disciplinary and I might have to sack somebody, the feeling is your stomach churns, you feel nervous and anxious, and it feels like a horrible thing to do. Become a governor and the day you lose that feeling stop being a governor, because that is how you should feel when you are taking someone's job off them'.

The best Governors are engaged in 'a search for legitimacy'[28] as well as a search for internal order. Governors describe 'career' or 'reputation' defining moments where, sometimes 'by the skin of their teeth', they have handled a difficult situation beautifully, often to their relief. In these situations, their ability to use good judgement, and to act on good example and advice, show their management skills and underlying values, and build credit with staff.

More attention should be paid to recruitment and selection, professional development, support and understanding of the work of the best prison governors. They should be encouraged to have 'moral conversations'. As John Howard observed in his *The State of the Prisons*:

The first care must be to find a good man for gaoler: one that is active, honest and humane.[29]

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[28] Bennett, J. (2015) *The Working Lives of Prison Managers*, Basingstoke: Palgrave Macmillan, p 240.

[29] Howard, J. (1777) *The State of the Prisons in England and Wales*, Warrington: printed by William Eyres, p. *25.*

Chapter 14
Restoring Human Rights and Dignity in Prisons
The Case of US Mass Incarceration

Hille Haker

The Fourth of July holiday in Chicago is typically one of the most violent. This year, 65 people were shot, leaving 10 dead, including a 7-year-old boy killed after returning from a celebration. "It's crazy," said Vedia Hailey, the grandmother of the boy, Amari Brown. "Who would shoot a 7-year-old in the chest? Who would do that to a baby? When is it going to stop?"[1]

1. Mass Incarceration in the US

In October 2015, a bipartisan group of Senators introduced a judiciary bill that – if it passes Congress – will end the worst elements of the US-American broken justice system. The proposal, called "Sentencing Reform and Corrections Act", passed the Senate and is likely to also pass the House of Representatives in the coming months. It will not radically transform the criminal justice system but at least mitigate some if its most criticized practices, e.g. end the mandatory minimum sentences for some nonviolent drug offenders, which disproportionally affects minorities (even though they do not consume more drugs), mostly male African Americans; it will mostly end juvenile solitary confinement; it will give judges more flexibility in sentencing, but it will newly include domestic violence and illegal possession of firearms in the mandatory minimum sentencing. It will most likely reduce the number of people held in incarceration – but certainly not end the age of 'mass incarceration'.[2]

US mass incarceration can only be understood in view of the Northern American history of race relations, especially the history of slavery, its abolition after the Civil War, the race segregation that long after its official ending has survived most cities in the USA, and the multilayered structural injustice that up to today affects the majority of African Americans, be it with respect to the education system, access to healthcare, or more generally, to economic prosperity – and prosecution of criminal offenses. *Mass* incarceration stands in stark contrast to the achievements of the civil

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1 Chicago Tribune, *Chicago under the Gun.* (2015) (http://graphics.chicagotribune.com/under-the-gun/2015/stories/ct-july-4th-weekend-violence-under-gun-story/, accessed: Nov 2015).

2 US Senate Committee of the Judiciary (2015). *Sentencing Reform and Corrections Act*. (http://www.judiciary.senate.gov/download/sentencing-reform-and-corrections-act-section-by-section).

rights movement of the 1960s; it is a recent phenomenon, emerging in the second half of the 20th century, spread throughout all states and the federal prison system; it is a political system that will certainly not disappear as long as only some more or less cosmetic changes are made to its most egregious elements, while the system as such is not touched.

Several historical studies, presented over the last years, echoed by the National Research Council Report 2014,[3] have pointed to the bone-crushing numbers of the incarceration system in the US: Between 1970 and 2015, the prison population has increased sevenfold, from "some 300.000 people to 2.2 million", making up roughly one quarter of the world prison population. 750.000 people work in the prisons, costing society $80 billion annually, with a considerable number of prisons running for profit.[4] While it is true that crime rates increased during the 1960s and 1970s, they decreased already in the 1990s, including violent crimes.[5] Yet, incarceration rates did not mirror these trends and climbed without much relation to the crime statistics. The violence in Chicago, certainly out of control in parts of the city and some of its suburbs, does therefore not reflect this trend; rather, it shows the catastrophic effects of a failed policy regarding the poor (mostly black) neighborhoods, beginning with urban planning and ending with disregard towards street gangs, which fight against each other in order to control the public space, threatening the overall population. Turning police attention to nonviolent crimes such as drug possession rather than the structural gang violence and organized crime including drug trafficking, may often initiate a criminal 'career' for young African Americans who are caught between the gangs and the police. The mandatory minimum sentence, the three strikes policy (meaning that after the third conviction a person will serve 25 years in prison), and the 'life without possible parole' creates a vicious circle that leaves many

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3 Travis, J., Western, B. & Redburn, S. (2014). *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. National Research Council of the National Academies (US). (http://www.nap.edu/download.php?record_id=18613). For a more thorough analysis cf. H. Haker, 'Sicherheit und Strafsystem'. In: M. Becka (Ed.), *Ethik im Justizvollzug* (2014). Stuttgart: Kohlhammer, pp. 117-146. Reference to more literature is provided there.

4 Coates, T.N. *Between the World and Me.* New York: Spiegel & Grau. (2015). The US population consists of about 300 million people. One reason for the increase of prisons was the "state truth-in-sentencing laws" established in the mid-1990s: states could obtain federal funds for building new prisons if they demonstrated that imprisoned people for violent crimes at least served 85% of their time – together with a shift towards privatization, this led to the construction of many prisons during the phase that Tonry describes more generally as a period of policies that were 'tough on crime'. Cf. Tonry. M. (2013). 'Sentencing in America 1975-2025', in: *Crime and Justice*, 42/1, pp. 141-198.

5 Tonry 2013.

African American families with having or having had the experience of a family member being in prison.[6]

Why does the system of mass incarceration emerge in the 1970s? There are many explanations: David Garland, for example, points to the rise of consumerism due to the development and marketing of automatized and moveable consumer goods (cars, radios and televisions, etc.), together with the changes of cities, but also the changes of security as causes for the emergence of a 'culture of control';[7] Wolfgang Streeck[8] and others have analyzed this further and contextualized the social transformation of Western societies, from welfare state policies to globalized, neoliberal economies, supported by the (mostly) conservative politics of privatization and, respectively, the outsourcing of the labor market. Last but not least, social scientists have pointed to the rise of the global drug market, and the coming-of-age of the baby boomer generation. All these factors may well have contributed to the rise of the incarceration system – yet, they do not explain the US mass incarceration. Michael Tonry identifies three 'master narratives': the first centers on the rise of crime rates – but this cannot explain the explosion of incarceration at a time when crime rates were already falling; a second theory, echoing Garland and others, refers to the heightened perceptions of risk and public anxieties to which politicians responded – but again, this narrative cannot explain why the US reacted in such an extreme way; the third narrative echoes Streeck's analysis of late 20th century individualization and decline of welfare politics that created a heightened sense to react harshly to those who seem to take advantage of system for which others take personal responsibility. Again, this narrative cannot explain the particularities of the US mass incarceration that has 'normalized' but distributed the risk of imprisonment very unevenly. Ta-Nehisi Coates, together with Michelle Alexander and many others, sees a deliberate politics of racism at work in the US, because the US society never honestly addressed its own history and never questioned the merit-based myth of the American Dream, while in fact it disguised the inequalities and unequal opportunities for the black and white American population.[9] Incarceration has hit the black population disproportionally hard:

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6 Cf. for an account of growing up in a neighborhood that is well-acquainted with the street violence, but also with racism and police violence: T.-N. Coates (2015). *The black family in the age of mass incarceration* http://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246/, accessed: Nov 2015).

7 Garland, D. (2001). *The Culture of Control. Crime and Social Order in Contemporary Society,* Chicago: Chicago University Press.

8 Streeck. W. (2011). *Gekaufte Zeit. Die vertagte Krise des demokratischen Kapitalismus.* Frankfurt am Main: Suhrkamp.

9 Alexander, M. (2010). *The New Jim Crow: Mass Incarceration in the Age of Colorblindness.* New York: New Press.

In 2000, one in 10 black males between the ages of 20 and 40 was incarcerated –10times the rate of their white peers In 2010, a third of all black male high-school dropouts between the ages of 20 and 39 were imprisoned, compared with only 13 percent of their white peers.[10] Hence, incarceration is not considered an exception but a real possibility for many male African-Americans and becomes part of their social identity: Among all black males born since the late 1970s, one in four went to prison by their mid-'30s; among those who dropped out of high school, seven in 10 did.[11]

Those who are imprisoned are, in the vast majority, arrested for non-violent crimes, often for the possession of drugs: for example, in 2012, 1.5 million persons were arrested for non-violent drug offenses; 750.000 of these drugs concerned marijuana, and of these, 90% were arrested for marijuana possession (not dealing or trading). Since the beginning of the 'war on drugs' under President Nixon, stunning 31 million citizens were arrested for drug offenses – 10 percent of the US population.

2. The Case of Kalief Browder

In June 2015, the US magazine "New Yorker" published a short article, reporting the death of Kalief Browder whom the author, Jennifer Gonnerman, had featured in a long article just a year before.[12] Kalief Browder had committed suicide at the age of 22. In 2014, Gonnerman had covered his 'story', the ordeal of a three-year imprisonment in an infamous jail system called Rikers Island in New York City, consisting of ten jails, eight for men, one for women, and one empty since 2000. Here, Kalief spent his adolescent years from 16 to 20, waiting for a trial he would never get, for a crime he never committed, in a clear but not uncommon breach of his constitutional right to a "speedy and public trial". While held in one of the buildings with 600 other adolescent boys between the age of 16 and 18, Kalief Browder spent seventeen months in solitary confinement – a practice that with the above-mentioned sentencing and correction reform will not end but only be limited for juvenile offenders. A 2014 official report described Rikers Island as a place with a "deep-seated culture of violence", both among inmates and between officers and inmates.[13] The

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10 Coates (2015), p. 13. I have analyzed this in more detail in H. Haker, Sicherheit und Strafsystem, in: M. Becka (Ed.) (2014). *Ethik im Justizvollzug,* Stuttgart: Kohlhammer, pp. 117-146.

11 Coates (2015), p.18.

12 Gonnerman, J. *Before the law* (accessed: Nov 2015); Gonnerman, J. *Kalief Browder, 1993-2015* (accessed: Nov 2015).

13 The authors write in their summary: "We have made the following specific factual determinations:
- force is used against adolescents at an alarming rate and violent inmate-on-

report lists injuries of inmates that reflect the physical brutality inmates are regularly suffering. Kalief Browder faced many legal and human rights' violations, beginning with the violation of his legal "right to a speedy and public trial", and ending with the injuries to his body and soul. Apart from the 'culture of violence', the disciplinary practices are clearly humiliating: Inmates had to, for example, wash their clothes by hands; they slept in an open room, with a plastic bucket to store their personal belongings, in reach for the gang leaders who used them as a means to demonstrate their power over other inmates. Kalief Browder observed other inmates being injured and was repeatedly involved in fights himself. Officers would threaten him and other inmates not to seek medical treatment after such fights; in court hearings, prosecutors tried to convince him to plead guilty. During solitary confinement, he could continue his education, but often, his daily work would not be collected. He lost considerable weight because the food rations were not sufficient for a teenager so that he told Gonnerman he began begging for food; and he was verbally and physically abused by officers, for which Gonnerman obtained video evidence only after her initial reporting. After almost two years of his imprisonment, Kalief tried to commit suicide for the first time; he was found, taken to the clinic, and then returned to solitary confinement. Within weeks, he attempted again to take his life, and again survived. A year later, with a new judge in place, his case was suddenly dismissed, because the plaintiff had disappeared and the prosecutor could not uphold the charges against Kalief. He was released in the summer of 2013, clearly traumatized and mentally injured, but left with no help other than from an attorney and his family. His next suicide attempt came in November 2013, and he was taken to a psychiatric clinic. Despite all these odds, he passed his high school exam and started to go to a community college. After the *New Yorker* article appeared in June 2014, a donor volunteered to pay for Kalief's tuition, and he gave several other interviews, because his case had caught quite some public attention.

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inmate fights and assaults are commonplace, resulting in a striking number of serious injuries;

- correction officers resort to "headshots," or blows to an inmate's head or facial area, too frequently;
- force is used as punishment or retribution;
- force is used in response to inmates' verbal altercations with officers;
- use of force by specialized response teams within the jails is particularly brutal;
- correction officers attempt to justify use of force by yelling "stop resisting" even when the adolescent has been completely subdued or was never resisting in the first place; and
- use of force is particularly common in areas without video surveillance cameras." U.S. Department of Justice (2014). Rikers Island has since been overhauled, but there cannot be a doubt that it was not the only prison complex with legal and human rights violations.

But at the turn of the year 2015, he had another breakdown and was again taken into a psychiatric clinic, only to be released after two weeks. In June 2015, he committed suicide.

If not the injustice of the wrong accusation, if not the abuse by other inmates and officers (documented in a video that Gonnerman made public with the consent of Kalief Browder), if not the repeated delay and postponement of his trial, it must have been the solitary confinement, many argue, that might have taken Kalief Browder down. Solitary confinement is a severe human rights violation, and yet, it is commonly practiced in the US incarceration system, even in juvenile prisons. Craig Haney, a psychologist, describes the impact in the following words:

The emptiness and idleness that pervade most solitary confinement units are profound and enveloping. The prison typically provides the prisoners in these units with literally nothing meaningful to do. That emptiness, when combined with the total lack of meaningful social contact, has led some prisoners into a profound level of what might be called "ontological insecurity"—they are not sure that they exist and, if they do, exactly who they are.[14]

Cases like Kalief Browder's shed some light on the US prison life. They demonstrate that human rights and dignity are empty terms in the shadow of a society that takes no interest in determining what justice conception the criminal justice system should be based upon.

3. Human Dignity and Human Rights as Normative Framework for Criminal Justice

Any criminal justice system is supposed to be a response to crimes, though it is not clear how effective punishment really is. Michael Tonry focuses his review of the last fifty years of US criminal justice policies in part on the underlying conceptions of justice. After examining different approaches, from the 19th century *consequentialist* model that was centered on minimization of (social) harm while also limiting what could justly be done to offenders, to the correction-centered model of *rehabilitation*, the utilitarian, proportional and *retributive* justice model (which he sees to be

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[14] Haney, C. (2012). Statement before the Senate Judiciary Committee, quoted in M. Berman, *Kalief Browder and what we do and don't know about solitary confinement in the U.S.* https://www.washingtonpost.com/news/post-nation/wp/2015/06/09/kalief-browder-and-what-we-do-and-dont-know-about-solitary-confinement-in-the-u-s/, accessed: Nov 2015).
Berman also quotes the Vera Institute for Justice, which estimates that about 80.000 people are held in solitary confinement on any given day. At Kalief Browder's jail, often one quarter of the more than 600 juveniles would be held in solitary confinement (*ibid*.).

focused on the re-tribution of harm done to victims, not retaliation), to the preventive *deterrence* model that prevailed from the mid-1980s until the mid-1990s, the time of sentence reforms and restrictive anti-drug laws, there is no model today that can be identified as normative conception underlying the practice of incarceration; rather, 'anormative' models "take no or reduced account of considerations relating to just treatment of offenders."[15] He comes to a dire conclusion: "Committing an offense, particularly a seriously violent or sexual offense, in effect makes offenders into outlaws whose interests do not matter. … they are seen primarily as social threats and not as people whose interests deserve the concern and respect that traditional retributive and consequentialist theories of punishment would give them."[16]

If there were a 'normative' theory underlying mass incarceration, I would hold that it is a theory of penance, resting upon the sovereign's right to punish as a response to crime.[17] It stands in stark contrast to the normative framework that was put in place seventy years ago by the international community.

The underlying moral concept of justice that the United Nations envisioned after World War II breaks in an important way with the political theories of states that are based on sovereignty over citizens:[18] it places individual human rights and the dignity of any human being *above* the state and at the same time directs states' actions towards securing these rights. It is a normative framework, and therefore the reproach that countries who ratified the Human Rights Declaration continue to violate the very rights they promised to secure, is right and wrong at the same time: there is no doubt that human rights are not realized in many countries, but at least seventy years, on we have an international moral framework through which these violations can be identified and addressed. Though often regarded as a continuation of some liberal political theories, the 'human rights regime' established in the United Nations Human Rights Declaration is neither "liberal" nor based on "Western" values alone, though it does contrast with those theories that prioritize the 'community' over the 'individual'. With this primacy of the individual and her rights, it gives

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15 Tonry 2013, p. 36.

16 Ibid., p. 35.

17 Tonry would most probably agree with this conclusion, because he asserts that the US system mirrors the description of pre-modern practices of punishment, which Michel Foucault had described in his *Discipline and Punish: the Birth of the Prison (*New York: Random House, 1975).

18 Conor Gearty has analyzed the history of political theory in light of human rights and democracy in C. Gearty, C. (2013). *Liberty and Security,* Cambridge: Polity Press. Cf. for an analysis H. Haker, Sicherheit und Strafsystem, in: M. Becka (Ed.) (2014). *Ethik im Justizvollzug,* Stuttgart: Kohlhammer, pp. 117-146.

justice theories and political deliberations a direction: human rights are meant to secure life conditions for individuals *to live a life in dignity*. These conditions range from the requirement of food, housing, or work to basic freedoms and the chance to participate in social and political affairs. Neither the concept of merit-based justice (underlying the "American Dream" that Coates calls the Dream of the Whites) nor the judiciary understanding of justice as penance for a crime that I have analyzed in the previous part is in line with the human rights regime. The concept of justice aligned with human rights also goes beyond the commutative justice that today is often associated with economic justice; that concept is based on fair exchange and social, reciprocal cooperation in symmetric relations, often designed as contractual relations. It is echoed in criminal justice theories that emphasize the re-tribution, i.e. some kind of repairing of the harm done to the victims of a person's acts. The human rights approach goes beyond this, because the (mere) appeal to procedural fairness or retribution understood as a kind of repair of the fairness between actors, as is the interpretation Tonry gives it, may too easily ignore the history of inequality and discrimination preceding the act of crime, and it may conceal the persisting structural inequality that may be reflected in a criminal system – such as the disproportional arrests of one social group. If we want to contextualize these traditional elements of justice, which are often pushed to the background when discussed in political philosophy, because the state seems to be first and foremost responsible for a just distribution of goods, within the contemporary discussion, we need to at least mention how they relate to the most important theory of justice of the second half of the 20th century, namely that of John Rawls.

Rawls introduced two major principles of justice, which have become the basis for most discussions (affirmative or critical) of justice in political philosophy. First, the principle of equality states: "each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others". Rawls complemented this principle of equality with the principle of difference: "social and economic inequalities are to be arranged so that they are to be of the greatest benefit of the least-advantaged members of society".[19] With these two principles Rawls tried to embrace

[19] Rawls, J. (1999). *A Theory of Justice,* Cambridge, Mass.: Belknap Press of Harvard University Press. Revised Edition from the original of 1971. Further modifications are made in *Political Liberalism*, where it reads as following: "Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal basic liberties, and only those liberties, are to be guaranteed their fair value." The difference principle now reads: "Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest

the gap between normative equality and factual inequality. Rather than following the strict reciprocity of equal partners, the difference principle was meant to compensate for the structural injustices or unequal starting points, unequal chances to flourish and/or pursue the life in dignity among citizens of a given society. And whether we follow him or not in his overall construction (and there are many reasons to be critical of the overall project) – it must still be acknowledged that Rawls paved the way for a new discussion of justice.

The gap between the normative principle of dignity that rests upon the equality of each individual, and the factual structural inequality between persons who may differ in many respects, i.e. social, cultural, ethnical, or religious backgrounds, is perhaps the most important reason why governments are necessary in the first place. And in order to hold persons accountable for their actions, the judiciary system is in place. Whether imprisonment is in fact legitimate and/or an appropriate response to crime has been the topic throughout the history of criminal justice, I will leave aside here. The human rights framework deals with the reality of imprisonment, and it connects it to the overall normative standards of human rights and dignity. When the criminal justice system is, however, disconnected from the social contexts and the policies aimed at closing the gap between the normative framework and the realities, individuals who are faced with incarceration may easily lose their social *and* moral status of dignity – *this*, not necessarily the *system* of incarceration as such, raises the concern of the human rights theory. For example: one can acknowledge that some of the neighborhoods in Chicago are almost broken down completely; that there are far too many single mother households; that the number of high school dropouts is far too high and, last not least, the insecurity in the homes and the public space creates an atmosphere of hopelessness. But instead of blaming the (lacking) moral effort of the people who live in these neighborhoods - as "responsibilization" policies have done – policies committed to the human rights based justice will attend to the history of segregation and urban planning in Chicago, and strive to secure the life-conditions in these neighborhoods to the same level as elsewhere in the city; such policies will certainly also empower those who strive to live a life in dignity to take care and participate in the neighborhood's and city's life; and it will hold those accountable – both inside and outside the communities – who threaten the social cohesion. But it will not rely entirely on justice theory of retribution, because this would conceal the underlying systemic injustice to which an isolated retributive justice system would not respond. And it would certainly

benefit of the least advantaged members of society." Rawls, J. (1993). *Political Liberalism,* New York: Columbia University Press, Rawls, p. 5-6.

not rest its judiciary system on 'penance' as the overarching reason for incarceration. The task for any theory of criminal justice is therefore to spell out how the normative claim of equality, based upon the dignity of every human being, can be uphold during the time of incarceration, and how felons can be re-integrated into society after their release.

The disconnect between the human rights regime and the most prominent theory of justice of contemporary Western political philosophy, on the one hand, and the theory of penance underlying the recent phenomenon of mass incarceration, on the other hand, is a clear sign that the US judiciary system increases rather than closes the gap between the normative expectation of dignity and equality and factual inequality and unequal treatment. Here are some selected passages from many more requirements that the UN, in its 2005 "Human Rights and Prisons" Pocketbook state:[20]

> *All human beings are born free and equal in dignity and rights.*
> *All persons deprived of their liberty shall be treated at all times with humanity and with respect for the inherent dignity of the human person.*
> *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. There are no exceptions. …*
> *Ill-treatment is defined as other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture. …*
> *All persons deprived of their liberty shall have the right to an adequate standard of living, including adequate food, drinking water, accommodation, clothing and bedding.*
> *There shall be facilities for keeping clothing clean and in proper condition.*
> *Prisoners and all detained persons have the right to the highest attainable standard of physical and mental health.*
> *Prisons should be safe environments for all who live and work in them, in other words for prisoners and staff, and for visitors.*
> *No one in a prison should fear for his or her physical safety.*
> *All cruel, inhuman or degrading punishments are completely*

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[20] Office of the United Nations High Commissioner for Human Rights, *Human Rights and Prisons: A pocketbook of international human rights standards for prison officials*, 2005.
(http://www.ohchr.org/Documents/Publications/training11Add3en.pdf).
These standards are based upon multiple documents, but grounded in the specific resolution concerning the treatments of prisoners (*Basic Principles for the Treatment of Prisoners*. UN.
(http://www.ohchr.org/EN/ProfessionalInterest/Pages/BasicPrinciplesTreatmentOfPrisoners.aspx) adopted by the UN General Assembly in 1990, United Nations General Assembly Resolution 45/111 (1990).

prohibited, including corporal punishment or placing in a dark cell.
Punishment by close confinement or reduction of diet shall never be inflicted unless the prisoner is certified by the medical officer as medically fit to sustain it.
The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.
Anyone who is arrested has the right to trial within a reasonable time or to release.

Seen in this light, the actual practices of the US criminal justice system require to be systematically reformed. But in order to do so, the connection between rights and dignity, and rights and justice, needs to be spelled out as clearly as possibly. It is here that the theory of recognition provides an important insight, explaining why justice theories are in fact necessary in order to secure the dignity of individuals, and explaining why criminal justice systems must adhere to the human rights of prisoners.

4. Wounded Dignity and Recognition Theory

Axel Honneth, one of the most prominent scholars who have addressed the issue of human dignity, has reinterpreted or, as some claim, further developed Hegel's theory of recognition as a concept that needs not only to be spelled out in light of experiences of intersubjective recognition but moreover, as an "approximation" of dignity by "determining what forms personal insult and disrespect take".[21] For Honneth, the task of ethics is therefore to analyze dignity and recognition indirectly, turning to the structures of *injustice* in view of *misrecognition*, spelled out as personal disrespect, social discrimination, and denial of political rights. In his major work on Hegel, Honneth identified the struggle for recognition in terms of a struggle against misrecognition, as it is *experienced* in personal relations, social structures and political institutions. Because of this experiential root of dignity, he claims that a 'comprehensive' theory of justice must go beyond political theory and entail practices of care and solidarity as the 'other side' of justice.[22]

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[21] Honneth, A. (1992). Integrity and Disrespect. Principles of a Conception of Morality Based on the Theory of Recognition, In: *Political Theory*, 20/2, (1992), pp. 187-201, p. 188.

[22] Honneth, A. (1995). *The Struggle for Recognition: The Moral Grammar of Social Conflicts,* Cambridge, UK; Oxford; Cambridge, MA: Polity Press; Blackwell. Cf. also Honneth's latest book: A. Honneth, A. (2014). *Freedom's Right. The Social Foundations of Democratic Life.* New York: Columbia University Press. Here, he takes the Hegelian concept as the starting point for a theory of freedom that is not

I can certainly follow Honneth in this analysis, but in his Hegelian concept, the 'struggle for recognition' is left mostly to those who suffer from misrecognition – whether it is successful or not, depends more on the solidarity *among* those who suffer from the injustice than on a more specific moral interpretation of the obligations required by any moral agent or institution. In the context of prison work, however, this interpretation needs to be transcended and spelled out as advocacy *for* those who suffer from injustice. So, my thesis is that unless those who a society decides to 'lock up' for a certain amount of time, experience 'recognition' or at least do not experience misrecognition and disrespect, incarceration cannot be justified at all.

The attention to misrecognition, and advocacy for, recognition, I want to argue, is neither identical with the struggle for recognition of those who are misrecognized or disrespected, nor can it be reduced to the *political* provisions of a system of justice, especially not to the provisions of criminal justice. Rather, attention to misrecognition and advocacy for recognition must be seen as a complement to practices of solidarity among those who struggle for recognition. I will later call this attention to misrecognition and advocacy for recognition a 'responsible response'; here, however, I want to first focus on why recognition matters so much to those who are threatened with misrecognition.

If prisoners are denied the dignity that is spelled out as concrete acts of recognition, their (temporary) exclusion from societal life becomes a social and moral exclusion; furthermore, this exclusion entails a degradation – a de-humanization that contradicts the first and basic principle of the human rights regime, which is based exactly upon the normative claim that human dignity is inviolable or, as the German Basic Law (Grundgesetz or Constitution) says: "untouchable". The UN Resolution on the rights of prisoners states: "All prisoners shall be treated with the respect due to their inherent dignity and value as human beings."[23]

But why is the link, or rather: the reinterpretation of dignity as an *interpersonal* concept, over against alternative interpretations of dignity as 'human endowment' or 'achievement', so important?[24] The first response

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just a variant of a political-liberal theory but rather an alternative interpretation, based on the theory of recognition.

[23] United Nations General Assembly Resolution 45/111 (1990).

[24] I have analyzed the concept of dignity in greater length in H. Haker, Die Würde des Menschen ist antastbar, in: L. Halbhuber-Gassner, W. Nickolai & C. Wichmann (Ed.) (2010). *Achten statt ächten in Staffälligenhilfe und Kriminalpolitik*, Freiburg i. Br.: Lambertus, pp. 29-44. Here, I follow mostly the reconstruction of the development of the concept of dignity as proposed by Arnd Pollmann. Cf. Pollmann, A. (2011). Embodied Self-Respect and the Fragility of Human Dignity: a human rights approach, In: P. Kaufmann, H. Kuch, C. Neuhäuser & E. Webster (Ed.), *Humiliation, degradation, dehumanization,* Dordrecht et al.: Springer, pp. 243-261. He suggests

that has been given by Axel Honneth, Charles Taylor, Judith Butler, Martha Nussbaum and many others is this: recognition is an important *condition* of a person's well-being, and it is developed by way of the personal care and love in the psychological self-development. This could be considered a psychological thesis that loses its function once socialization has more or less come to an end at the stage of adulthood. However, Axel Honneth has shown that recognition is much more than the condition to develop a positive sense of self in the process of socialization: apart from the personal self-development, it is a person's social identity as well as her legal status as subject of (legal) rights that is captured by the concept of recognition. Recognition is a *precarious* state: for sure, there is no self-esteem without the personal and affective care and love by others; but furthermore, there is no positive sense of social identity without the social affirmation that constitutes one's sense of belonging; and there is no self-respect without the respect in the political sphere that guarantees one to have the same rights as others.[25] Hence, a person's individual, social, and political recognition is tightly linked to the threefold concept of recognition as self-esteem, self-respect, and sense of (social) belonging. A person who is faced with direct personal violence is humiliated and at great risk to be damaged in her personal identity or self-esteem.[26] A person who is rendered lawless within the political sphere loses her status as citizen or, as Hannah Arendt famously said: without the right to have rights, the status of citizenship is impossible to maintain and cannot be practiced. And thirdly, a person – or group – who is stigmatized as 'other' because of a group characteristic is degraded and at risk to be excluded from multiple social practices that constitute social cohesion.[27] Without these three dimensions of

to conceptualize dignity as a precarious capability, its realization being dependent on others in variable degrees throughout the life of a human being. *Because* dignity is precarious, it requires measures of protection and promotion, spelled out as human rights. Dignity is therefore the purpose of the human rights framework, which aims at ensuring that every human being is enabled to live his or her life in dignity.

25 One can, of course, question the destructive force of misrecognition on all levels and stress the fact that human beings may be more resilient to disrespect, shaming, and lawlessness. But as I have said above, Honneth uses the negative experiences as an indirect strategy to 'approximate' what is meant by the concept of dignity, not as a demonstration that everyone is necessarily affected similarly by acts or practices of misrecognition.

26 This is why shame is an important side-effect of humiliation; shame, like recognition, cannot be understood without its relational and/or social dimension.

27 A very impressive study of the effects of such a non-belonging is presented, as so often, in a fictional work: Richard Power's novel *The time of our singing* traces the struggle of a racially 'hybrid' family in 20th century America, where society demands the unambiguity of the races for the place of social belonging – even though the racial 'belonging' itself creates manifold injustices, the children of a

recognition, a person's self-integrity and identity is threatened or may be severely damaged; persons who are denied rights and banished from the political and legal sphere are left without the possibility to appeal to any authority that they are harmed and hence treated as outside the realm of legal justice; and social misrecognition de-stabilizes or fractures the necessary social affirmation and sense of social belonging. The effects of denied recognition can be (and, in fact, have been) analyzed in multiple contexts. In the context of prison systems, they include physical and psychological violence such as in beatings or sexual abuse, practices of social stigmatization include the disciplining of every-day practices within prisons, and the effects of being excluded from citizens' rights, such as in the denial (or suppression) of the right to vote, which is a common practice for certain US prisoners.

While political rights have often been the main focus of the 20th century political philosophy, recognition theory has shown the connection of political recognition with the other two types, social and personal recognition. And now we can see how the US system not only *mirrors* the overall existing social structures of injustice and misrecognition rooted in the racial history but also *exacerbates* them. If arrests are perceived as arbitrary or based on racial profiles, if rights are denied with respect to trials, if innocent people are 'lured' into pleading guilty and sentences are especially harsh, and when the life in prisons entails a "culture of violence", all these practices increase rather than decrease the sense of lawlessness.

Prison officers and all persons working with prisoners play a crucial role in shaping the experiences during the time of incarceration, because they represent the 'other side', the world outside the prison. In their interactions with the prisoners, they represent the social values of the society to which prisoners are supposed to return, and which they are supposed to embrace. But many studies show that prison officers and/or workers abuse their power to increase rather than decrease the asymmetry between them and the prisoners and exercise disciplinary actions and rules as means to domination.[28]

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so-called mixed-race couple are faced with the injustice of race in addition to the social misrecognition of their particular "inter-racial" identities so that they wish to belong "purely" to either of the 'races'. Being shamed is to be distinguished from the shame that a person may feel when she is humiliated, but obviously, personal humiliation and social shaming or stigmatization go often hand in hand.

[28] It may not be a coincidence that exactly imageries of domination were evoked in the humiliating photos taken in the Abu Ghraib prison in Iraq. This particular incident should serve as a reminder for the present and future 'war against terror' – namely that according to the Human Rights Declaration, *every* human being participates in dignity and must be granted his or her rights, including terrorists. This is by no means an easy task – and it is most difficult for those who face those who have committed horrendous crimes.

According to the human rights framework, prisons should be spaces of accountability for crimes, acknowledging the *agency* of persons who need to be held responsible for harms they have inflicted upon others, and laws they have violated, while at the same time acknowledging the vulnerability to being misrecognized – after all, the human rights are aimed at *protecting* individuals against potential harms, now to be spelled out as harms by way of misrecognition. And here, the indirect or negative approach to dignity is of utmost importance, because it relates the normative ethical concept to a person's sense of self: if misrecognition is the dominant experience of prisoners, how can we expect them to transform their self-identity and, furthermore, how can we expect them to develop a positive social identity? How can we expect them to abide by the laws if they are rendered lawless by the very system that claims to be just? If the experience of justice is that it is the power to decide who is respected and recognized – how can we expect any transformation to happen?

Recognition is relational, and it is concrete. One may consider acts of recognition at the same time as acts of solidarity with those who are misrecognized: recognition then is the practice of embracing the ones that have been humiliated, the inclusion of those who are socially excluded, and the political and legal advocacy for those who have been rendered lawless. *Justice* requires practices of solidarity with those who are misrecognized, concretized as acts of recognition; and every human being, including those who have broken the law, has the right not to be harmed by acts of misrecognition.

5. Justice under the Conditions of a "Broken Criminal Justice System" – The United States Conference of Catholic Bishops Statement on Crime and Criminal Justice

In 2000, the Unites States Conference of Catholic Bishops issued a statement, which they called "Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice".[29] They start with a diagnosis that echoes the analysis I have alluded to in the previous part:

> *It is time for a new national dialogue on crime and corrections, justice and mercy, responsibility and treatment. As Catholics, we need to ask the following: How can we restore our respect for law and life? How can we protect and rebuild communities, confront crime without vengeance, and defend life without taking life?*[30]

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[29] Unites States Catholic Conference of Bishops (2000). *Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice,* 2000.

[30] Ibid., p. 3.

And a little later they state:

> *A Catholic approach begins with the recognition that the dignity of the human person applies to both victim and offender. As Bishops, we believe that the current trend of more prisons and more executions, with too little education and drug treatment, does not truly reflect Christian values and will not really leave our communities safer. We are convinced that our tradition and our faith offer better alternatives that can hold offenders accountable and challenge them to change their lives; reach out to victims and reject vengeance; restore a sense of community and resist the violence that has engulfed so much of our culture.*
> *…*
> *All those whom we consulted seemed to agree on one thing: the status quo is not really working—victims are often ignored, offenders are often not rehabilitated, and many communities have lost their sense of security. All of these committed people spoke with a sense of passion and urgency that the system is broken in many ways. We share their concern and believe that it does not live up to the best of our nation's values and falls short of our religious principles*.[31] (USCCB, p.3)

After offering an analysis that emphasizes not only the disproportional incarceration rates of African Americans but also those of Hispanic and Native American minorities, pointing especially to the detention of immigrants in prisons, sometimes together with felons, the Bishops plead to shift the interpretation of justice: they propose to apply the concept of restorative justice, replacing what they consider to be the prevalent retributive justice concept:

> *Restorative justice focuses first on the victim and the community harmed by the crime, rather than on the dominant state-against-the-perpetrator model. This shift in focus affirms the hurt and loss of the victim, as well as the harm and fear of the community, and insists that offenders come to grips with the consequences of their actions. These approaches are not "soft on crime" because they specifically call the offender to face victims and the communities. This experience offers victims a much greater sense of peace and accountability. Offenders who are willing to face the human consequences of their actions are more ready to accept responsibility, make reparations, and rebuild their lives.*[32]

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[31] Ibid., p. 3.
[32] Ibid., p. 23.

The statement emphasizes that restorative justice is in line with the principles of Catholic Social Teaching but stresses more than the current system the possibility to repair the damage done to victims and/or to the community, and the possibility of transformation or even 'conversion'. This approach underscores that personal identity (taking responsibility for one's actions), moral and religious identity (the premise of the right to live a life in dignity, and granting moral agency to every person), and social identity (the acknowledgment that persons are part of a community that itself has a responsibility to give offenders the chance to restore their relationship with others) must be seen together. At the end of the statement, the Bishops repeat their demand to end the death penalty, which they see in contradiction to the Catholic ethics of life.[33]

As much as the shift towards restorative justice can be welcome as one element of a necessary solution, it emphasizes the personal transformation of the felon without adequately addressing the prevalent structural injustices as background of the criminal justice system. Since US mass incarceration is affecting black persons disproportionally, *any* theory of social and/or political ethics, however, must first attend to the structural injustices caused by the history of racism and the unwillingness of the US society to deal with it, and the effect of this history on the self-understanding of those who are the victims of unequal treatment, racism, and social shaming. The latter is, for example, the case when crime is associated with *character* traits of a given social group, which is to explain why certain individuals belonging to this group are at a greater risk to commit crimes. Such ascription of individual responsibility is communicated often in US media documentaries of crimes, and it is widely used in the US. But it does not only concern criminal offenders; it is used for people and groups who rely on social programs for reasons of poverty, too, and was used in the major reforms of social policies during the 1990s.[34] Focusing primarily on the responsibility of individuals shifts the burden for social shortcomings and social failure, or the non-achievement of the "American Dream", to the individuals; those who have suffered most from failed policies and social divisions are then told that they do not take enough effort, are not motivated enough, rather rely on social programs than lifting themselves up, etc. [35]

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[33] I have (critically) analyzed the document in greater length in Haker (2014). The interrelation between the personal, moral, and social identity is already my extrapolation and constructive interpretation of the document, present in nascence but not fully developed there. The USCCB statement is, in my view, still ambivalent in its analysis of the relation of the restoration of the social order, and the emphasis on the communal restoration between an individual and the community may be illusionary unless the underlying structural social injustices prevailing within the communities (and societies by and large) are also addressed.

[34] Young, I.M. (3013). *Responsibility for Justice.* Oxford, Oxford University Press.

[35] Cf. Ibid. Young shows how during the presidency of Bill Clinton this individualization

Hence, as welcome as the move towards a new understanding of justice is, restorative justice must not be fall into this trap of "responsibilization", i.e. the further individualizing of high crime rates in certain areas and among certain groups. Rather, it should be used to connect social restoration – namely, the restoration of the relationships between the white majority and the black minority – with individual restoration that *then*, but only then, is certainly welcome as a 'new' concept of justice to be applied, among other areas, in the criminal justice system.

If we consider the relationship between the personal, moral, and social identity as I have alluded to with reference to recognition theory, we can better understand how justice could indeed be realized within the prison system: it would require experiences of personal affirmation, legal rights, and the creation or fostering of a community in which a new social identity can be shaped, based on as little asymmetry as possible and social affirmation of inmates' achievements, for example in education, work, or the goals that they have set themselves.[36] Without being directed by the Human Rights Framework that spells out very concretely the rights and obligations of prisoners and those who work in prisons, justice in the criminal justice system is impossible. A thorough analysis of the current affairs in all stages, from arrests, sentencing, and prison life, reveals that the US system is not only 'broken' as a political system (i.e. too expensive, and ineffective) but also, as the USCCB has correctly stated, it is also broken in moral terms.

6. Attention to Misrecognition and Advocacy for Justice – Christian Ethics and the Role of Prison Chaplains

> *'To speak of God means to express the suffering of others and to lament responsibility neglected and solidarity refused.'*[37]

Acts of recognition, which will often start with the attention to misrecognition and the advocacy for justice, but cannot stop there, play

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of responsibility became an important pillar of the social programs, for example, to fight poverty. Rather than empowering persons and fostering their individual, social, and moral agency, however, the personalization of responsibility rested almost entirely upon a merit-based justice concept. Coates' book demonstrates how the "Dream" is considered a notion of and for white people and not even desirable from his perspective, because it does not account for the relational and social dimensions of agency. Cf. Coates, 2015.

36 Becka, M. (2016). *Strafe und Resozialisierung. Hinführung zu einer Ethik des Justizvollzugs*. In that work, Becka analyzes in great detail how this reinterpretation of identity can be conceptualized and put in practice.

37 Metz, J.B. (1999). The Pluralism of Religious and Cultural Worlds: Notes toward a Theological and Political Program, In: *Cross Currents*, 49/2 (1999), pp. 227-236, p. 231.

a crucial role in the transformation of a person's damaged sense of self to a sense of self-esteem, self-respect, and the sense of social belonging. If this is the articulation of dignity, the Jewish-Christian understanding is certainly in line with it: in this tradition, dignity is indeed relational, but it adds a layer to the interpersonal relational concept that Honneth retrieved from Hegel. Religiously speaking, dignity is based upon the recognition of every human being as 'image of God'. Human responsibility is rooted in *vulnerable agency*, which is articulated as precariousness and vulnerability to suffering *and* the capability to take responsibility for one's actions; hence, the religious identity entails a specific self-understanding, relating the self to God as humble, often failing, being, but also as a being who is often failed by others and therefore seeking comfort in God's unconditional solidarity.[38] Yet, at the same time, the self is related to God by a specific response that one is capable to give, not as a *condition* to God's recognition but as a *response* to it. According to the theological or religious interpretation of Judaism and Christianity, the self's relation to God rests, first, upon *receiving* the Covenant of God with all people, second, upon *being granted* unconditional recognition, and third, upon the capability to *actively respond* to the needs of others to be recognized. The responsible response is already a re-action, re-sponding to God in responding to others who depend on an answer to their 'call'. In the context of prison work, this response will require the transformation of suffering into well-being, the conversion of injustice into justice, the conversion of banishment into recognition and respect, and the social exclusion into practices of inclusion and participation.

Christian theology, Johann Baptist Metz says, cannot and must not dismiss the authority of the suffering. Listening to their stories and looking them into the eyes requires overcoming the anonymity of structures – it demands coming close and letting them close to us. As everyone would agree, it is first and foremost the victims especially of violent crimes who must be addressed with compassion. In the context of prisons, however, the prisoners themselves become the challenge for the responsible response. And while the victims are often those who are – correctly – addressed with sympathy, offenders are often – understandably – met with anger and outrage. The human rights framework aims at transforming this response into a *responsible* response – and therefore, it calls for overcoming the fear, the outrage, and the thirst for revenge, challenging these emotions into a just, a *responsible* response. It is the standard of *justice* that any criminal justice system must adhere to – and therefore it matters if a system does not go beyond the mere penance of the offenders of laws.

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[38] Cf. for a thorough analysis of vulnerability Haker, H. (2016). Verletzlichkeit als Kategorie der Ethik, In: M. Bobbert (Ed.), *Parteilichkeit und Ethik* (pp. 193-226). Berlin/Münster: Lit, pp. 193-226.

We can have no significant understanding of any culture unless we also know the silences that were institutionally created and guaranteed along with it.[39]

Sometimes, the distinction between the victim and the perpetrator is blurred. At other times, innocent people are treated as criminals as was the case with Kalief Browder, or people are sentenced with no proportional justice. Too often, in the US criminal justice system, prisoners' rights are violated. But it is the task – and the challenge – of those who respond to their crimes – police officers, prosecutors, attorneys, judges, prison officers and everyone inter-acting with prisoners within a prison culture – to counter any threat or experience of misrecognition with experiences of recognition. This does not exclude but, to the contrary, include the respect of prisoners' agency, and the advocacy for justice: it includes the necessity that crime offenders are being held accountable for actions they have committed, and not being held accountable for actions they have not committed. Fair trials, fair sentencing, and fair treatment while incarcerated are all parts of a 'decent' criminal justice system, i.e. a system that is oriented towards closing the gap between the normative claims of the human rights framework and the reality of injustice. Justice is owed to the victims of crimes, but it also owed to those who commit crimes.

Prison chaplaincy is not only the work of advocacy for justice and recognition but it must also be conceived as the concrete 'site' of recognition: in responding to the need to be recognized, the experience of humiliation, degradation and lawlessness that echoes so many narratives of prisoners may be countered by experiences of respect, affirmation, and the right to have rights. Such responses will not transform the systemic injustices but may well pave the way for a reform that not only includes political reforms but also the training and ongoing education of prison workers and the concrete interactions with prisoners on all levels – through these, they will, at a minimum, contribute to the "re-humanization" of those who have been dehumanized, contribute to the re-socialization of those who have been excluded from society, and they will contribute to the restoration of dignity for those who have been denied the right to live a life in dignity, which is possible everywhere under the right conditions, even in the extreme social space of a prison.

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[39] Alexander, M. (2010). *The New Jim Crow: Mass Incarceration in the Age of Colorblindness.* New York: New Press, p. 168.

Chapter 15
Changes and Stability of Italian Prison Chaplaincy in the Context of Religious Pluralisation

Irene Becci

1. Methodological premises

Starting from the empirical data I collected in the frame of my dissertation[1], I shall in this text elaborate some thoughts about the way in which religious diversity has emerged as a question from 1960 to the beginning of the new century for Italian penitentiaries. My approach is based on discourse analysis[2]. Now, discourses around religion are not autonomous but operate in the context of the institutional supports and practices that they rely upon and which form sets of power relations. I shall concentrate on the institutional level of the relation between secular and religious authority.

This is why I shall first provide the background knowledge necessary to understand what the institutional support for the discourses on religion was at the time. Only afterwards, can we analyse the discourses of the actors. The type of data I have collected is thus composed of primary data (interviews of inmates, chaplains and prison wardens and observation notes) and of secondary data (newspapers, newsletters, statistics, legal texts). A triangulation of the discourses on religion and religious plurality coming from the different sides shall reveal the characteristics attached to specific positions beyond the particular persons in a relationship of establishment.[3] Discordances in the discourses from different actors on one topic, question the structural settings. This method has revealed precious in organising the discourses of the chaplains with regard to their different status. I have chosen to interview inmates and religious actors

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1 Cf. Becci, I. (2006) *Religion and Prison in Modernity. Tensions between religious establishment and religious diversity - Italy and Germany*, European University Institute, defended in March.

2 Discourse analysis is the analysis of "a specific ensemble of ideas, concepts and categorisation that are produced, reproduced and transformed in a particular set of practices and through which meaning is given to physical and social realities" (Hajer, M. (1995) *The Politics of Environmental Discourse.* Oxford: Oxford University Press, p. 44).

3 Concerning triangulation cf. Denzin, N.K. (1970) Strategies of multiple triangulation. In *The Research Act in Sociology: A Theoretical Introduction to Sociological Method.* N.K. Denzin (ed.) New York: McGraw-Hill, pp. 297-313; and Flick, U. (2002) *Triangulation. Methodologie und Anwendung. Qualitative Sozialforschung*. Bd.12. Leske+Budrich.

because my intention is to grasp the meanings and interpretations they attach to what they see and do, what they experience in a precise context. I have asked the same questions to different persons in different sites. To all of them I have guaranteed anonymity. In each of the prisons there were very few chaplains, sometimes only one. In order to assure them anonymity, I have chosen not to indicate the names of the prisons. I limit myself to indicating the region in which the prison is situated and provide some characteristics of the various prisons. Here I shall concentrate my attention on two prisons in Tuscany, Italy.

Prison A is a very large one; it hosted 1050 inmates in 2002. It was built at the beginning of the 1980s and is located just outside Florence. Two full-time chaplains, one Roman Catholic the other Melchite, were appointed to this prison and a Catholic nun attends on a regular basis. Actually it combines a set of prisons: both women and men are imprisoned there, in different sections. One section is destined for persons waiting for their trial and one for those coming to the end of their sentence. There is also a high-security wing. As a consequence of this multi-functionality the turn-over of inmates was very high. I have been teaching English as a volunteer on a weekly basis for about six months to two classes of mainly foreign nationals in this prison. I did not interview them, but interviewed some of the chaplains of the prison.

Also prison D is located in the suburb of an important Tuscan city and was constructed in the 1980s. It is a smaller prison hosting about 500 inmates. The section for long-term sentences is particularly large here. The turn-over of inmates was therefore particularly low. Only one Catholic chaplain was employed here on a full-time basis. To enter this prison, I had authorisation from the Ministry of Justice to conduct interviews with inmates and spent three days in the building, mainly in the school area and in the prison library. I could also visit the church.

In both prisons numerous associations and volunteers were operating to provide material and moral support. A limited number of inmates of both prisons also had the possibility to receive instruction at various levels. The experiences of the persons I interviewed, inmates as well as chaplains, referred not only to these two prisons. The names of prisons located in Milan, Rome, Turin, Naples and Piedmont were also mentioned.

The question that guided my curiosity concerns the way in which the meaning of religion is constructed in the context of relations of meaning and within institutionalised relations of power.

2. The emergence of the modern Italian political-theological organisation of prison

It was the relation of mutual support between the church and the Italian state that allowed for an institutionalisation of religion in prison. In order to provide the framework for our understanding of the Italian case, let me

make some quick considerations about the Lateran Pacts.[4]

These few elements that I pick up out of the Italian configuration of state-church relations certainly do not provide an exhaustive picture. Looking at them with a sociological eye, though, we can at least see that already the basic assumptions of the secularisation theories should in some way be reconsidered.

The *Patti del Laterano,* signed in 1929, were composed of three protocols:

- The **Treaty,** abrogated the guaranty law and created a new, independent confessional State: The Vatican. Article 1 declared the Roman Catholic Apostolic religion was the sole religion of the State. "Other cults" were "permitted", albeit being relegated to a clearly inferior level.[5] The Catholic Church also endorsed the legitimacy of the Italian state.
- The **Financial Convention** ruled in particular the reimbursement of the damages due to the loss of the pontifical states, expropriated by the State in 1870.
- The **Concordat**[6] part contained laws concerning the recognition of the civil effects of the sacrament of marriage as administered according to the regulations of Canon Law, and on religious teaching, which became compulsory in public schools, recognised Catholic festivities as public, etc.

The function of religion was to maintain order and discipline. In exchange, the state formulated some laws in order to assure high rates of church

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[4] The part on the time before the 1980s is mainly based on Viglione, M. (1986) *Rapporti Stato e Chiesa dall'unità d'Italia ad oggi: documenti salienti di storia contemporanea*. Brescia: Vannini; and Jemolo, A.C. (1965) *Chiesa e Stato in Italia dalla unificazione a Giovanni XXII*. Torino: Piccola Biblioteca Einaudi. Jemolo is the author who most contributed to the Italian history of state-church relationships. He was also member of the commission that had the task of rewriting the agreements between the State and the Church in 1984.

[5] This meant all non-Catholic religions professed on the Italian territory. The list was actually very extensive but the number of members of the religious minorities was very small at that period. Even if the statistics of 1911 showed a certain increase, the highest rates remained low. In Turin, the Protestants were 19558, in Milan 6863, in Rome 4624, and in Naples 3190. The only important non-Catholic community was composed of Waldensians, an Evangelic church born as a heretical movement during the Middle-Ages, and situated in some valleys in the north of the country. This Presbyterian community was opposed to the Catholic Church and they were particularly appreciated by Mormons, Jehovah Witnesses and Adventists. Finally, it played the role of intermediary between all the "Protestant groups" on one hand and the state on the other. Cf. Introvigne, M. & Mayer, J.-F. (ed.) (1993) *L'Europa delle nuove religioni*. Turin: elle di ci; and Garelli, F. (1996) *Forza della religione e debolezza della fede,* il Mulino.

[6] A concordat is a particular form of international treaty between two co-existing powers on the same territory.

membership. Article 141 of the prison rules of 1931 attributed the task of taking care of the prison library to the chaplain. Article 142 made religious participation compulsory for Catholic inmates, and allowed those inmates belonging to non-Catholic faiths not to participate. Leaving the Catholic Church was made extremely complex and was even refused to prisoners who were younger than 21. As far as non-Catholic inmates were concerned, they had to ask for religious care if they wanted some, but nothing guaranteed them to obtain it. They were completely dependent on the warden's goodwill.

The elaboration of the Italian Constitution after WWII introduced new principles in the penitentiary realm. Article 27 formulated the new pillars of the prison-system: the prisoners should not receive any treatment that is considered contrary to human dignity and they should be re-educated. As far as religion was concerned, the attendance to religious services was redefined; attendance continued to be compulsory, but not the intimate adhesion to the religious doctrine. The obstacles concerning the abandonment of the Catholic faith or religious conversion were removed. The state recognised in the Catholic Church as a necessary partner to accomplish its task of rehabilitation. It could not conceive its duty of re-education without using religion. During the discussions that preceded the vote on the constitution, the sentence "all confessions are equal before the law" was rejected with the argument that privileging the Catholic Church did not mean privileging the Catholic religion. Hence, the result was Article 8, saying that all denominations are "equally free before the law". Thus, equality was guaranteed as far as freedom was concerned, but the historically obtained privileges, such as defined in article 7 of the Lateran Pacts, were recognised.[7]

The Pacts would so continue to be entirely valid and the Catholic Church to be the "sole Religion of the State". The Catholic Church being a distinct territory on the territory of the state, it was regulated by international agreements, which give it a particular status concerning some fundamental issues normally treated in the framework of the constitution. In fact, no other religion has the same geographic position or the same historical background, and therefore, no other religion could pretend to be put on the same juridical level or to have a proper concordat with the state. Articles 19 and 20 of the constitution refer to non-Catholic religions and state the recognition of religious freedom.[8]

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[7] *Art. 7. - Lo Stato e la Chiesa cattolica sono, ciascuno nel proprio ordine, indipendenti e sovrani. I loro rapporti sono regolati dai Patti Lateranensi. Le modificazioni dei Patti accettate dalle due parti, non richiedono procedimento di revisione costituzionale*.

[8] *Art. 19. - Tutti hanno diritto di professare liberamente la propria fede religiosa in qualsiasi forma, individuale o associata, di farne propaganda e di esercitarne in*

In summary, through the concordat, the Italian state showed clearly which its limits in governing sovereignly were. As far as the legislation of prisons was concerned, the post war period introduced only a few important changes: Article 27 of the new constitution abolished the death penalty, which had been reintroduced by the Fascist regime. Globally, however, as Verde[9] writes, up to 1975 prisons were ruled according to the rules instituted by Fascism in 1931.

During the 50s, the level of agitation in Italian prisons was high. In order to calm down the prison revolts different steps were taken. Radio transmitters were authorised but the permitted programs were severely selected according to their moral message. The chaplains were part of the selection board. At Christmas 1951 Pope Pius XII addressed on *Radio Vaticana* a special message to prisoners. The same Pope also participated in the Penal Law debate advocating the consideration of free will and moral judgement. In 1958, Pope John XXIII newly elected visited the Roman prison of *Regina Coeli*. The event was massively reported. Since then, this kind of ceremonies has been multiplied. The frame narrative is always that of resurrection.

During the 1960s, the 2nd Vatican Council supported freedom of religion as a fundamental secular right of the church. Importance was given for Catholic charity work not to neglect the material aspect. This fully legitimised inmates' care in a spiritual as well as a material way.[10] From that moment on, the Catholic Church would continually stress the need of proximity between the whole population and the suffering parts of it. In 1963, the state instituted, unilaterally a chaplains' inspector, dependent on the Ministry of Justice, with the duties to control the service of religious assistance and having only administrative tasks. The prison chaplains regained some authority but were also subject to the direction.[11] The end of the 60s was in Italy, as in Europe, a period of social critique and revolt. Inside the prisons revolts were frequent during the 70s and so were escapes and suicides. In spite of the harsh repression they obtained some concessions. Various regimes of the everyday life of the inmates were improved: showers, exercise yards, diet, hygiene, etc. A time slot called 'free time' was introduced. In reality the time fitting into this slot was not free at

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privato o in pubblico il culto, purché non si tratti di riti contrari al buon costume.
Art. 20 - Il carattere ecclesiastico ed il fine di religione o di culto d'una associazione od istituzione non possono essere causa di speciali limitazioni legislative, né di speciali gravami fiscali per la sua costituzione, capacità giuridica e ogni forma di attività.

9 Verde, S. (2002) *Massima Sicurezza. Dal carcere speciale allo Stato penale*. Rome: Odradek, p. 23.

10 Cf. De Vito, Chr. (2009) *Camosci e girachiavi. Storia del carcere in Italia.* Editori Laterza. Roma – Bari.

11 For instance, in 1972, the chaplain of a prison in Naples was fired because he criticised the prison system.

all. The management and often the chaplains had prepared a whole list of activities to fill the slot of free time: concerts, sports, theatre, and cinema. One interviewed Italian chaplain, who passed away in 2006, remembered that it was through cinema that his contact with prisoners started:

> *A chaplain friend of mine asked me 'would you come and talk to these guys about your trip?' 'Sure' I said, 'I'll show them the pictures' and he took me to the prison. These guys listened to me and already at the time I was interested in cinema, in means of communication and so I said immediately, 'I'll show you guys some movies, too.' 'Really are you showing us some films?' 'Yes' So I went, took a projector and showed them some cinema. That's how we have started with that. Then the cardinal sent a letter and wrote that I could go and be prison chaplain.*

In many cases the chaplains would be responsible for commenting on the films and classifying them. Sometimes they kept the record of the reaction the inmates had to them. The moral re-education was mainly articulated around the Catholic model. For instance, learning to speak properly in prison meant not to blaspheme.[12] Some articles of the prison rules were recognised as not respecting religious freedom. Whereas during the 1960s basically a paternalistic-authoritarian attitude was dominant in Italian prisons, the 1970s brought a significant change also in penal theory and practice. The prison system was de-centralised to create decent working conditions and alternative measures were introduced to convert imprisonment to other types of 'treatment'.

However, smoothly such a curative attitude, the inmate would just follow the instructions given according to what others thought was good for him, simply moved him towards an increasing demand for him to collaborate in his own rehabilitation. Inmates had to offer their own resources to actually enjoy any special treatment.

In 1975 the prison rules were profoundly reformed, in particular the outside community was given more consideration, treatment individualized, alternative measures were planned and social work and education professionalised.[13] Thanks to the important reform of the penal law, some steps were also taken towards enforcing religious freedom; the obligation to attend religious services was abolished and the freedom of religion was recognised. Article 1 of the new law states that the treatment of prisoners has to be absolutely impartial; no one should be discriminated against for her religious beliefs. A further achievement of religious freedom was to stop considering religious behaviour a criterion for judging whether

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12 Cf. De Vito (2009).

13 Cf. De Vito (2009).

a prisoner was behaving 'well'.[14] At the same time it was thought also to establish that in every prison one or more Catholic chapels be constructed and that every prison should have at least one priest.

In prison, group activities, such as group therapies were encouraged. The administration could if necessary also decide to punish by forbidding them. Several observers have noted in that moment a move towards a system of diffused social control. Life in prison became increasingly varied but all activities were now, more than ever before, much more scrupulously noted, observed, classified. As a matter of fact, the new penitentiary rules were not accompanied by an organisational change of the prison administration. Parallel to each new proposed activity there was also a new rule about who was excluded from it. In 1977 high security prisons, *carceri speciali*, were introduced and with them the idea of prisons from where one could not escape. The diversification of punishment, on the one hand, and the introduction of alternative measures aimed at inciting convicts to collaborate with the justice (in particular for members of criminal organisations) on the other, created a situation in which convicts would constantly address the prison administration, either to request privileges or to check out whether the time of imprisonment could be reduced.[15] At the same time, the Catholic Church's charity work diversified: Old and new Catholic organisations came in support of the tendency of externalising prison, but also new secular organisations started to blossom.[16]

The new prison law meant also a secularisation of the assistance to convicts: nuns were no longer guards in women's prisons, educators replaced some of the chaplains' activities.[17] The chaplains' tasks were specialised and soon became crucial in a different way.

From 1974 to 1982 Italy traversed a period that is known as that of 'emergenza terrorismo'. One part of the answer to that was the entrance on the scene of a major reform of the prison law in 1986 under the heading of "legge Gozzini", from the name of an independent left wing senator who had promoted it.[18] This meant a certain liberalisation of prison life.

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[14] Since the Lateran Pacts, the state guaranteed Catholic Italian citizens the possibility to accomplish all their religious duties even in prison. The same was not guaranteed to persons belonging to other faiths, whose religious behaviour could therefore not be seen as a sign of integration.

[15] Alternative stands for a situation in which convicts are not hold to stay in the prison buildings but are under the control of public and private territorial services.

[16] Cf. De Vito (2009).

[17] Cf. De Vito (2009).

[18] Mario Gozzini was part of those called 'catto-comunisti'. He had been studying and teaching history of religions. For inmates, the word 'Gozzini' has become synonymous of benefits obtained in exchange of a good conduct. Cf. 'Terre di mezzo' (2001) *I pugni nel muro. Linguaggio e frammenti di vita dei detenuti del carcere di San Vittore.* Editrice Berti, Supplemento al n° 85, November, p. 66.

Inmates were encouraged through freeing measures to collaborate with the justice. It favoured in particular convicts who decided to cut their ties with terrorist organisations and aimed in particular at better controlling the prison population. The conditions to accomplish benefits from various measures introduced by the reform were mostly of disciplinary order. Now, psychiatry was undergoing in those years a significant and deep questioning. An influential civic movement supported the abrogation in 1980 of asylums all over the country. Under these conditions, instead of having the convicts inspected by single psychiatrists, the whole prison staff was transformed into a watchful, observing staff, chaplains and nuns included. In particular inmates being incarcerated for having participated in criminal organisations easily intercepted the possibilities offered by the new rules. One of the interviewed convicts with an experience of long-term says:

> *I have experienced the 80s in prison. It was a harsh time but we were lucky to have the Gozzini law which was a great law. We had a total social re-integration with this law. It was a good law, a law that made the state win. Prisons were quiet, everybody has changed, and there weren't any revolts. Consider that out of 100 inmates 95 would come back among the life-sentences. There was a total change in prisons. You had to participate actively in your re-integration, with concrete actions. There were several teams, all were teams, doctors, the chaplain, all were observing teams. Even when I was working in prison, for instance at the prison shop, the shop agent would observe me and comment on my behaviour because I was with him every day. At the time, prisons were exploding: there were revolts. I have experienced those years personally and I have seen a great change.*

In other words, as soon as chaplains had lost their controlling and observing functions, a change in the overall prison system would re-align them to such roles. The application of alternative measures requested increased means that actually were never given. The mass of work was huge for the workers so that numerous cases of burn outs were declared. This is why it was not a surprise that, soon, the spirit of the law, that was meant to target the improvement of the social, physical, material and mental conditions of inmates, disappeared. Instead, the new law slowly introduced a system of carrot and stick and increased the level of social control over inmates. The 1975 changes also affected pastoral care. It was no longer seen as a prolongation of the "Religione dello Stato", but as a right for all citizens. A strong distinction between established and non-established religions remained. Article 26 of the new law states that while all inmates are guaranteed freedom of conscience and religion, in the prisons the Catholic Mass is celebrated and one Catholic chaplain employed. To obtain spiritual

care, inmates of other faiths can make such a request.[19]

Parallel to these developments, in 1976 the Vatican and the Italian government started to revise the Lateran pacts.[20] In that period, the Italian state was mainly led by centre-left and catholic parties.[21] Only very few politicians and intellectuals asked for the abrogation of the Pacts. The aim was mainly to redefine some aspects, not to completely change the relationship.[22] Although it was recognised that the Pacts of Lateran as a form of Treaty were a major problem for the Italian state, the new text uses the same vocabulary. Formulations such as "new agreements", "suitable consultations" to be made in order to solve the different possible cases in the future actually indicate that the concordat was conceived as open and perpetually changeable. At the centre of the debates was the question of freedom of religion, this time understood more in the sense of freedom of the people to practice their religion, and not of freedom of the Church on one territory, as it was stated in the Council. Article 2 of the new agreements, however, also guaranteed the liberty of the Catholic Church.

The church received the right to communicate its own moral principles on the state territory, and to enforce all the possible structures in order that Catholics could practice all the requirements of their religion, in any situation. The presence of the church was thus guaranteed in all public institutions: prisons, schools, hospitals, etc. The state is supposed to provide the means so that the church can respond to the religious demands of Catholics, the large majority of the population. It is interesting to see that an important modification, that of refusing to consider the Roman Catholic Apostolic religion as the sole religion of the state, is only mentioned in the additional protocol. The state says nowhere that it is *laic/lay*, but just that the Roman Catholic Apostolic Religion is no longer the only religion of the state. Two major changes affected religious care in prison: the status of the chaplain passed from aggregated personnel to personnel in charge of

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19 Drigani, A. (1988) *L'assistenza spirituale negli ospedali e nelle carceri*. Rome: LAS.

20 Concerning the revision, cf. also Del Giudice, F. (1984) *Il nuovo Concordato: analisi storica, politica e giuridica del nuovo testo: commento e raffronti con la legislazione precedente*. Napoli: Simone; Ferrari, S. (1985) *Concordato e Costituzione: gli accordi del 1984 tra Italia e Santa Sede*, Bologna: Il Mulino; Manacorda, M.A., Vigli, M. & Long, G. (1995) *Stato e Chiese: il potere clericale in Italia dopo il "nuovo concordato" del 1984 tra Craxi e Wojtyla*, Viterbo: Nuovi equilibri, Stampa alternativa.

21 Important intellectuals, such as Jemolo, were representing the state. Jemolo originally wanted the abrogation of the pacts. He died before the end of the works in 1981.

22 The process of rewriting was very long and weary. A first draft was presented to the Deputy Chamber in 1976. In 1983, eventually, a final draft was proposed and a strongly modified version of it signed in 1984. Cf. Margiotta-Broglio, F. (1985) Il negoziato per la riforma del concordato tra governo e parlamento. In ed. Silvio Ferrari *Concordato e Costituzione: gli accordi del 1984 tra Italia e Santa Sede*, Bologna: Il Mulino.

spiritual care and the notion of pastoral care itself was replaced by that of spiritual care.[23]

3. From pastoral to spiritual care

This change is a major indicator of what was going on in the religious realm. It denotes a passage from a top-down principle – pastoral care – in which an a-symmetrical, hierarchical relationship between a religious organisation and a passive, receptive individual, towards a bottom-up model – that is spiritual care – a dialogical relationship in which the individual is autonomously asking for assistance, requesting the state to provide her with spiritual care of the chosen religious community. Spiritual care is now considered as a right of inmates protected by the state, and not an obligation for inmates imposed by the joint action of state and church. 'Pastoral care' is a concept used by the Christian churches to describe one realm of their action for salvation. It refers to the activity through which they relate to the secular world and in particular to its suffering and less privileged part. They reach out to it in order to provide those parts of society with the 'services' that belong to the church's mission: spread the word, provide moral, ethical and spiritual guidance and thereby 'save'. Pastoral care is summarised as "comforting those in need", as a function of the church, it is the application of the larger idea of caring for one's soul. The expression 'spiritual care', on the contrary, refers primarily to the individual's needs in the spiritual realm it does not start with the institution. According to the sociologist Max Weber, an idea of spiritual care exists in a variety of religions. It is however in the revealed prophetic religions that it we can find it in a "rationalsystematischen Form".[24] He defines *Seelsorge* as "die religiöse Pflege der Individuen", or the action of "Spendung von individuellem religiösem Trost in innerer oder äusserer Not".[25] It can to some extent be argued that these two notions characterise succeeding phases in the history of the Christian churches in Europe. Certainly in the Middle Ages the church had introduced an institutional understanding of individual salvation through making, in 1215, yearly confession compulsory for all Christians. Martin Luther individualised further spiritual care. Later, with the Second Vatican Council, we observe a process of individualisation in the legal language and provisions that impinges on the religious field. Nowadays through the presence of establishment, the logic of pastoral care continues to exist in parallel to that of spiritual care. The Catholic Church continues to have its place guaranteed and protected by the state

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[23] This change made the chaplain's position less precarious from a juridical point of view, but it kept it under the surveillance of the Ministry through the inspector.

[24] Weber, M. (1964) *Wirtschaft und Gesellschaft. Grundriss der verstehenden Soziologie. 1. Vol*. Köln/Berlin: Kiepenheuer und Witsch, p. 365.

[25] *Ibid*.

in prison, whereas the other religions can assure only a sporadic presence.

4. The integration of other faiths into the legal system

We have seen that establishment implies a particular standpoint on recognition. What does that standpoint precisely entail in a context of religious freedom and diversity in prison? I shall first give some hints about how the 'religious other' slowly entered the Italian sphere of legal recognition and then come to the discourses of actors in prison.

In 1988, some religious groups, such as the Seventh-day Adventists and the Lutheran Church obtained the right not to be obliged to work on their holy days.[26] By the beginning of the 21st century, the Italian state had agreements with the union of Jewish communities, the Waldesians (l. 449/1984 modified l. 409 1993), and the Adventists (l. 516/1988, modified l. 637/1996) - the "admitted religions" of 1929, with the Pentecostal (l. 517/1988), Jewish (l. 101/1989, modified l. 638/1996) communities, with the Italian Baptist Evangelical Christian Church (l. 116/1995) and the Italian Lutheran Church (520/1995). As far as Buddhists, Jehovah's witnesses are concerned, agreements have been met in the last years but no laws have yet been promulgated. Also Mormons, various local Evangelical Churches, the Orthodox Church, the Armenian Church, the Methodists and the national Bahai'i community are recognised publicly as religious communities of public right.

The recognised religious communities can nominate a minister who they recommend for spiritual care, and the state has no right to interfere in the nomination procedure.[27] The latter can call them when inmates of these faiths or their family ask for spiritual care.[28] Once the non-Catholic chaplains are registered in the official list of representatives of recognised religions, they do not need any special authorisation to enter a prison establishment and provide spiritual care. Since 1975, they have no re-educational function any longer but are only appointed to guarantee religious freedom of all prisoners. Since 1982, they can be paid even for the time they work in prison. However, they are considered as external collaborators by the administration. Unlike Catholic chaplains, Jewish, Lutheran or other sessional chaplains do not have the right of secrecy.

Since 2000 various adjustments have been made in order to guarantee

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[26] Cf. Parlato, V. (1996) *Le intese con le confessioni acattoliche.* Turin: G. Giappichelli.

[27] Cf. Menicagli, S. (2000) *Le intese dello Stato italiano con le confessioni non cattoliche. Il caso della comunità islamica.* University of Florence. Master in Sociology of Law.

[28] The recognised religious community has to hand a list of pastors responsible for spiritual care to the responding authority. The persons on the list do not need any more authorization. When they enter a prison for assistance, an adapted room needs to be offered by the prison. The prison warden informs the community upon request by inmates.

equality: some concern diet, that is, the prison administration has to guarantee appropriate food to those inmates who want to follow religious dietary prescriptions. A further adaptation was to limit allowances only if they cause troubles to the community. The constitutional duty the state has to eliminate the economic and social obstacles limiting religious freedom is however realised only through the Catholic chaplain. Still, a great number of efforts are made to find special agreements with other religious groups.[29]

5. Ambiguities of an established position: the experience of chaplains

Nowadays, Italian chaplains are constantly present in prison. This puts them, however, also under the control of the administration and can lead to some tensions. For instance, one chaplain of the Modena prison complained in 2000 about the fact that the administration wanted him to be part of the observation team.[30] He argued that such an idea did not respect religious freedom. The same reaction came from the Italian chaplain I interviewed:

1. *IB – Are you in the observation committee?*
2. *- No, we are not part of it, legally.*
3. *IB- If you wanted couldn't you participate?*
4. *- I don't want to, and they shall not dare ask me to do so. If some of my colleagues go, I am opposed, I think they're wrong. If one tells me the truth during a confession, there is the sacrament of the Christian faith, that's the internal forum. If you think that if you tell me some things during a confession I will use them to say 'it's a nice guy. During the confession – I don't tell you what he said – but it appeared that he has changed' do you know how many confessions I will receive? It's an explosive mix. I have the right, the duty of confession and judges know it.*
5. *IB – Does that mean that a certain mistrust from the administration remains about chaplains?*
6. *- I would say it has been like this sometimes, they try to abuse it.*

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[29] It is not allowed in Italy to register the religious belongings of inmates. Therefore, most of the following reflexions are based on estimations. As far as religious communities are recognised, Introvigne even states that Italy is legally speaking, one of the most favourable environment for religious minorities (Introvigne, M. (2001) Religious Minorities in Italy: Legal and Political Problems. In *Religion-Staat-Gesellschaft* Heft 1). Also Parlato (1996: 33) writes about these guarantees: "La legislazione italiana relativa al fenomeno religioso, sia costituzionale che ordinaria, offre sicure garanzie al soddisfacimento dei bisogni spirituali dei cittadini."

[30] Cf. *Ispettorato dei cappellani dell'Amministrazione penitenziaria e della giustizia minorile* (2000), Protocollo n. 82228906, p. 4-5.

Within the structure of the church, being a prison chaplain was symbolically appreciated but certainly not among the most cherished positions.[31] Most of the interviewed Catholic chaplains were also quite aged. The administration appeared as always ready to pull the chaplains into disciplining functions and the church did not officially react against that, but the chaplains did. On the one hand, chaplains relied heavily on the institutional position they had thanks to the establishment of their church, on the other, they acted as persons facing the inmates as independent from the administration and able to use their personal space to resist against the submission of their position to the disciplining power of the prison administration. With the article 11 of the new concordat of 1984 between the Catholic Church and the state, the nomination of prison chaplains passed to the church. All these steps led to increased autonomy for chaplains.

6. Religious diversity and diverse care

Since 1970 to today the Italian prisons have witnessed a steady increase of inmates in general and of non-Italian ones in particular.[32] In 1989 the foreign nationals present in Italian prisons were only 10,7%, whereas one year later they reached 15,5%.[33] Today, the average number of inmates of foreign nationality in Italian prisons stands over 30%, and the prisons of big towns, such as Florence have even 60% to 70% of foreign inmates. There is not only a numerical difference between national and foreign inmates. For instance, 60% of the alien inmates are in pre-trial detention whereas that percentage stands below 40% for Italians. In 2002, only about one third of the about 60000 incarcerated had an education level of primary school[34] and less than 1% have an academic diploma.[35] The religious socialisation varies hugely according to the national origin of

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[31] During the national conference of chaplains in 1994, they also regretted that the Church was still lacking a serious biblical, moral or theological reflection about the meaning of sentence that would critical approach the current prison situation.

[32] According to De Vito's (2009) reconstruction, in the region of Florence between 1966 and 1975 the average of foreign inmates was about 3.5%.

[33] Cf. Verde 2002, p. 143/218. Salvatore Verde also shows that the increase was actually introduced massively by the politics of the 90s, criminalising migrants in Italy. The augmentation can be also measured at the number of foreigners among the new arrivals in prison. In 1991 the percentage of foreigners entering prison was 17,3% and in only five years it climbed to 28,1%. In 1999 it reached more than one third, and in 2000 the rate was highest, 36,2%. The point here is not to discuss this interpretation but to acknowledge the fact of a disproportionate incarceration of migrants.

[34] Antigone (2001) *Inchiesta sulle carceri italiane, Rapporto Antigone.*

[35] Censis (2003) 37° *Rapporto sulla situazione sociale del paese 2003*, Francoangeli, Rome, pp. 660-668.

the inmate: Italians (about 65%) had received generally a conventional Catholic socialisation, those born and raised in Muslim-majority countries a Muslim socialisation and those from really existing socialist countries (such as Albania, China, Algeria) a rather low religious socialisation. This impacted quite heavily on conversions, more concretely it impacted on the probability to convert.

Moreover, if we look at the number of crimes for which persons are incarcerated in Italy, we find that Italians are clearly in the majority compared to foreign inmates. That means that the latter have a higher chance to be incarcerated for the same amount of crimes than Italians.

This proportionality is probably what makes an Italian chaplain say that prisons are less dealing with criminality than with migration issues. He told me that actually most of his commitment is addressed to foreign inmates, because the whole prison is re-orienting its functions:

It's more a center for temporary permanence for clandestine immigrants than a prison.

While officially the Catholic chaplains continue to be the sole responsible for the spiritual well-being of all inmates, other type of religious interventions started to emerge, in prison C, for instance, one cultural mediator – called Imam by some - and one Melkite chaplain speaking Arabic were interlocutors for many Muslim inmates. According to the imam celebrating some religious services on a regular basis, it was not an exaggeration to estimate that 50% of the inmate population is Muslim, but only about 30% of them were fasting during Ramadan. To have an idea of what that meant in terms of daily environment, I made a small inquiry with those inmates with whom I had a regular exchange because they followed my English classes. On that day, in 2004 they were 15: One of them was Italian, one from Latin-America and not affiliated to any religion, two were Chinese and Buddhist, four Albanians – one with no religious affiliation, one Muslim and two Christians - six from Maghreb – all Muslims - and one Sub-Saharan inmate also Muslim. In summary, of the 15 inmates there were two or three Christians, two inmates who had no religious affiliation, two were Buddhists and eight Muslims.

With the quick increase of the number of inmates during the turn of the century, also the issue of over-occupation arose. Prisons built during the 1980s followed European regulations and planned single cells. The rates of incarceration rose quickly, and the structural adjustments were unable to catch up so that in practice the space was reduced for each inmate. In most cases, the cells did encompass more inmates than they were foreseen to. In the observed prisons, few were the inmates who had the opportunity of being in a single cell. The inmates could rarely choose who they wanted to share the cell with so that numerous problems of cohabitation arouse

and some of the rights about decorating one's own cell were obviously restricted. Only inmates proving that they had special needs (study, health, etc.) were entitled to request a single cell. According to one interviewed chaplain this was a major source of troubles:

> *When they are two or three in one cell [...] that's when all the problems arise. I mean prisons are constructed to put one person in each cell [...] it would certainly be calmer both for inmates and for those who work there, there would also be less therapy, there would be a better atmosphere to live and to encourage rehabilitation, also considering when one is released [...] I think it would be easier.*

According to data from the Ministry at the end of 2001 about 40,6% of the inmate population was foreign, and only one year later, as D'Anastasio has shown, that percentage increased, reaching 44%. Today, the assumption takes that about 50% of inmates are foreigners (cf. Rhazzali 2015).[36]

The chaplain working in prison D was holding a personal statistic and told me that in February 2004, the Italian inmates rate was 59% and the foreigners were therefore around 41%. According to official data[37], the proportion of foreign inmates grew steadily between 1997, when it stood at 22,32%, and 2008 when it reached 37,48% before diminishing in 2014 and stabilizing around the rates it had in 2005, that is, 32,56%.

Once we realise the proportions religious diversity has reached, it becomes clear that the majority argument for providing facilities to some religious groups and not to others, has become obsolete. The current institutional settings for spiritual care appear out-dated and illegitimate. Did this new situation change the registers of justification for those employed for providing religious care or not? If it did, what new register of justifications were used? And how were the relations between the traditional chaplains and the new forms of religious care emerging? It is in the following analysis of the answers of the interviews that we shall find answers to these questions.

7. Making sense of differences

As said, every prison is provided with at least one Catholic chaplain.

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[36] Rhazzali, Kh. (2015) Religious Care in the Reinvented European Imamate Muslims and Their Guides in Italian Prisons. In I. Becci, & Olivier Roy (ed.) *Religious Diversity in European Prisons.* Springer, New York, pp. 117-138.

[37] Source: Dipartimento dell'amministration penitenziaria, Ufficio per lo sviluppo e la gestione del sistema informativo automatizzato, section statistique: http://www.giustizia.it/giustizia/it/mg_1_14_1.wp?facetNode_1=1_5_30&previsiousPage=mg_1_14&contentId=SST165666, checked on 15.5.2016.

The chaplains act both in a logic of pastoral care and spiritual care. Also in many other regards, in particular compared to other staff members, the chaplains are neutral figures. Their action is directed to the whole institution, they bridge gaps and tend to stand on the side of inmates. For inmates, chaplaincy represents a large extent of possibilities: a space of freedom at the boundaries of prison. The most relevant perception concerns the chaplain's relation to the administration: is he independent, outside of the daily routine and bureaucracy of a prison, does he stand on the side of the inmates, or is he a prolongation of the institution's controlling and disciplining action? The alternative is not really one. As soon as he participates to rehabilitation, the chaplain is also a controlling agent. The freedom the chaplain receives from the administration is therefore somehow a poisoned gift. For instance, if there are not enough prison officers working on a Sunday in order to permit the inmates to attend religious service, the chaplains will not be allowed to celebrate it. The same is true if other activities, judged as more important by the prison administration - such as meetings - have to take place during the ordinary hours of religious services. The prison administration requires the chaplains sometimes to go through very complicated agreements. For instance, they have to celebrate several religious services on Sundays for the different sections of one prison, as the inmates of the different sections are not supposed to meet.

If religious communities with no agreements at all with the Italian Government nominate ministers, their nomination has to be approved by the Ministry of Interior. Their visits in prison can follow a request coming from the prisoners or their families or it can be their own initiative and the prison administration is supposed to put the prisoners and their religious community into contact. Religious actors who are not registered, will be treated as volunteers, which means that they are not paid, have to undergo much more control measures and are consequently less free. Instead of following this administratively rather heavy path, recently, 'new' religious agents are entering prison. Their status is that of cultural and linguistic mediators. What does that mean? The cultural and linguistic mediator is a professional figure that has been existing in Italy only since 1998. He or she has to be a legally resident foreigner, fulfilling the task of facilitating the relations of state administrations with regard to ethnic, national, linguistic or religious specific persons.[38] Legally, there is no obligation for prison administrations to hire cultural mediators, there are only recommendations. In both Italian prisons I visited, the direction had financed small projects to provide organisational support to foreign

[38] D'Anastasio, A. (2002) *Le esperienze di mediazione culturale nei confronti degli stranieri in carcere*, University of Bologna, Graduation in Diritto Penale Avanzato, p. 46.

inmates with the help of cultural mediators. They can enter prison and help Muslim prisoners on linguistic and cultural matters. The administration does not consider their action as religious, but their interventions are situated on the edges of the social, cultural, spiritual and linguistic realms. No such project exists at a national level.

A very original combination to respond to an emergency situation due to the increasing number of Arabic speaking inmates has been found by one Tuscan prison administration. A Melkite priest from the Lebanon has recently been employed. Speaking Arabic and with a great deal of experience of the Arab world, he takes care of many Muslims and Orthodox, and of their contact to the representatives of their religious community. As he pointed out himself during the interview, he knows quite a lot about Islam from his experience in the Middle East and can therefore handle the recognition of Muslims. In this wording, there is a relation of complicity:

> *We and the Arabic world are accomplices. They know that they need an authorisation but I helped them. Obviously then, I am the one in charge. I know it, I recognise it, and everything is easier. It's very important because as I said, I know Islam.*

This is an interesting case in which spiritual care for Muslims is covered in a very diplomatic way by the Christian church. He told me clearly that his 'audience' were mainly foreign inmates:

> *IB – You take care of - ?*
> *- Most of all I take care of foreigners. The Imam, well we're friends, I always meet him because we support each other. But then the guys are in direct contact with me not with him.*

This chaplain played an important role of brokerage. He has contacts with Orthodox and Muslim communities outside, but is mostly the only contact for foreign inmates. There are several reasons for this, some of them laid on the side of the sessional chaplains who did not / could not take the time to enter prison only for one or few inmates. In this case the Italian chaplains' intervention was appreciated:

> *I am a friend of the Rumanian orthodox priest.*
> *IB – does he work in prison C, too?*
> *- No, he says 'you go', he has delegated everything to me. He doesn't come, he doesn't even come. It's always about the fact that it's not easy to be at disposal.*

The Beckord and Gilliat study in prison has demonstrated that in England and Wales chaplains were often in the position of brokering and

facilitating multi-religious requests.[39] As far as my research is concerned, I have reached similar conclusions. In most cases, the established chaplains would try to cope with requests coming from inmates of 'other' religions. As soon as the spiritual care of "other faiths" depended on the established chaplain, obviously his personality counted heavily; his connections outside prison and his commitment in inter-faith dialogue were crucial. In Tuscany, the Melkite priest was convinced that chaplains had to facilitate spiritual care for other faiths:

> *IB - Do you think that it is also the chaplain's task to facilitate spiritual care for other religions?*
> *- Yes, sure. As far as Muslims are concerned I have always been doing it. When they decided a couple of years ago to make the prayers, I was the one who with the representatives, they can make them everywhere. If they pray in our chapel, we take away the few things. If they are many they go to a big room. The Imam prefers to stay in the chapel because it is already a place of prayers. That's not a problem the real Muslim is not a problem.*

Brokerage is a consequence of the fact that nowadays, the logic of pastoral care continues to exist in parallel to that of spiritual care in both Protestant and Catholic contexts. The principle of brokerage though, is seen as problematic in particular from the point of view of the 'others'. No matter how friendly and well-intentioned a Catholic chaplain is, brokerage puts him in a situation in which he mediates between different languages from a dominant standpoint and is not necessarily competent in all languages. The Rabbi I interviewed in Florence delicately expressed why this can be seen as a problem:

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[39] By brokerage they refer to the multiple ways through which chaplains facilitate visiting ministers' activities in prison. For instance, they seek new Visiting Ministers, oversee their appointment and induction, offer them guidance, monitoring their pastoral work, supply them with information about inmates of their faith, conducting joint ventures, processing requests for resources and facilities for use by other faith groups. After Beckford and Gilliat's study was published the Christian chaplains stopped being responsible for 'brokering' things on behalf of 'other faiths'. There is now a full-time Muslim Advisor to the Prison Service who takes responsibility for Muslim prisoners. Inmates of other faiths have their own 'religious service providers'. Cf. Beckford, J. A. & Gilliat, S. (1998) *Religion in Prison. Equal Rites in a Multi-Faith Society*. Cambridge University Press; and Furseth, I. (2003) Secularization and the Role of State Institutions. In *Social Compass* 50 (2), pp. 191-202.

IB – Some say that the chaplain is everybody's priest
- Well, that's not true, even if it's seen to be true, it's not ok because everybody has his own religious, ritual formation. He can be a very nice person but language – not only religious but also cultural language – works also on ethical, moral, religious character sensitivity. It's all one, actually it can be part of that alienation. That is an inmate is alienated from one's freedom but also from one's own culture, history and in order to be helped he has to talk using a mediation that is not his own.

As a Muslim inmate told me, sessional chaplains having the authorisation are not always keen to enter prison. Before being imprisoned recently for the second time, he had met an Imam outside and asked him directly why he would not come to prison:

When I was free I went to the Mosque here in D. I met the Imam and he told me that he had been authorized to enter prison D but he had no time. They gave him the authorisation but he can't find the time to come. When did he tell me that? In 2003, when I was outside, he's still not come.
IB – And what did you tell him?
- Well, I don't know what authorisation they gave him because when I was outside I didn't know how it was here. When I came in I saw that there's a mosque, some men pray together, so I started to go to the mosque. I saw that we needed help. For instance, that he comes and helps us by giving information about the mosque, that is prayers, what to do. Because he has studied the Qur'an, he has studied the Hadith. He knows how it is.

8. Conclusion

The chaplaincy is on the dividing-line between direction (seen as repressive) and the inmate population (seen as needing help). The chaplains are put in a situation of freedom from many administrative constraints but they are also in a relation to the administration of dependency. The perceptions the inmates have of the chaplain varies strongly in accordance to the relation they have to the administration in particular as far as their religious affiliation is concerned.[40] This position is unique and cannot simply diversify to adapt to the new plural composition of the inmate population.

[40] I have elaborated on these aspects for instance in Becci, Irene (2011) Religion's Multiple Locations in Prison. Germany, Italy, Switzerland. In *Archives de Sciences Sociales des Religions* 153(1), pp. 65-84.

Nowadays – and this has been varying historically - religious practice counts, besides as a right, also as part of the treatment of rehabilitation.[41] Precisely this double role highlights the ambiguity of religion in prison and the structural affinity between the two institutions. Spiritual care is considered as a right protected but also controlled by the state. Chaplains and prison direction are jointly responsible for this control. Particular labelling and control strategies are applied to new situations linked to the recent increase of religious diversity. They need to be monitored closely in order to allow the best working conditions for both traditional and new forms of spiritual care.

[41] Cf. for instance, art. 15 of the Italian Prison Rule.

Part IV:
Concepts

Chapter 16
Justice, Peace and Reconciliation for and with the Marginalized: A Challenge for the Church[1]

Cardinal Peter K.A. Turkson

1. Introduction

The ICCPPC-conference taking place in Yaoundé, Africa, and the chosen theme - *Catholic Prison Ministry Working for JUSTICE, PEACE and RECONCILIATION* reminds us of the Second Synod for Africa in 2009 on *The Church in Africa at the service of reconciliation, justice and peace*. Moreover, the chosen *special emphasis on saving the families of prisoners and helping their children* cannot help but remind us of the First Synod for African, fifteen years earlier in 1994, which happily identified the Church as the *Family* of God in Africa.

In naming the Conference ***Justice, peace and reconciliation for and with the marginalized: a challenge for the Church***, the planners have deliberately or inadvertently raised an interesting question which I would like to pose now so that you might reflect on it. Some may have noticed that the topic of the Second Special Assembly for Africa is ***Reconciliation, Justice and Peace***, while the Yaoundé ICCPPC says ***Justice, peace and reconciliation***. But in what order would you put key words like "peace - truth – justice – reconciliation" which are also used to name Commissions like South Africa's? Do we begin or end with reconciliation? How as prison chaplains do you respond? Would police, judges, prison administrators, guards, even prisoners themselves respond differently? What new light, then, does the II Synod shed on Catholic prison ministry in Africa and throughout the world and the phenomenon of marginalization?

2. Marginalization as Absence of Integration and Communion

Globalization allows us almost immediately to contemplate the living conditions of the groups of people who today constitute, in different societies, the "newly marginalized"[2]. These conditions of life are present

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1 This article is the revised key note speech Cardinal Turkson held at the ICCPPC congress in Yaoundé, Cameroon, in August, 2011.

2 Cf. *Concluding Document, V General Conference of the Bishops of Latin America and the Caribbean, Aparecida* [DA], § 402: "Globalization is causing the emergence of new faces of the poor in our peoples [-] the new excluded: migrants, victims of violence, displaced people and refugees, victims of human trafficking and kidnappings, the disappeared, people sick with HIV and endemic diseases, drug addicts, adults, boys and girls who are victims of prostitution, pornography and

in all nations regardless of their economic wealth or level of material development; and they are conditions in which people have great difficulty to exercise basic human rights and to achieve the basic needs of a dignified human life. To this class of *newly marginalized* belong prisoners and, sometimes, also their dependents; and the conditions and the presence in society of *marginalized* groups betray humanity's sense of brotherhood and solidarity. They prove that globalization, indeed, has brought us together, but has not quite made us brothers and sisters in solidarity, and responsible for each other, as in a family.

The first synod of Bishops for Africa enriched our understanding of the Church by considering her a *family of God.* The imagery of *church-family of God* was first and foremost one which described ***communion*** and ***integration*** as the basic nature and identity of the Church. The *church-family of God,* therefore, is the expression of the **identity** of the Church as a reality in ***communion: in communion with God and in communion with one another.*** In this light, the theme of the second synod for Africa follows upon that of the first synod as an expression of **mission** for a c*hurch-family of God* whose identity and nature is ***communion.***

It becomes immediately evident that there is a dialectic tension between the **identity** and the **mission** of the church; and that it is in dealing with this dialectic tension that the church in Africa realizes her historical character and begins to respond to her true character and identity as *church-family of God* and the (*fraternal*) *body of Christ.* In the second synod, the church in Africa recognized that she becomes truly the *family of God* and the *brotherhood of Christ* to the extent that she promotes an African church and society in which people are reconciled and integrated over and above their tribal and ethnic ties, their racial and cast determinations, and their marginalization. The Church in Africa recognized that she can become truly the *family of God* she claims to be only to the extent that she becomes and promotes a society that lives in communion and enjoys peace. In other words, *church-family of God* realizes her nature and identity as family and brotherhood to the extent that she causes *"family",* "*brotherhood", "communion"* and "*belongingness"* to happen: to the extent that she become incarnate on earth (*inculturates*) in the Christian communities, in human society and in human history as *members of a family in communion and fully belonging*. Indeed, the church in Africa must be the historical form of the *Kingdom of God* on the continent; and the church cannot have an identity that does not become historical and real in history. So,

violence or of child labour, abused women, victims of exclusion and traffic for sexual exploitation, disabled people, large groups of unemployed men and women, those excluded by technological illiteracy, street people in large cities, the indigenous and Afro-Americans, landless peasants and miners". See ff.

the invitation to the *church-family of God* in Africa by the synod theme to be *servants of reconciliation, justice and peace* (as *salt of the earth and light of the world*) is a challenge to the church in Africa to live up to her nature in the historical and concrete life of the continent by promoting communion and integration through reconciliation, justice and peace. It is a challenge to historical relevance and to concrete witness of identity (*to inculturate*) in the life and experiences of the continent; and at this congress, the promotion of the family virtues of belongingness, integration and communion through reconciliation, justice and peace is applied to the marginalized lives of prisoners, the detained, the victims of justice and the victims of offences and wrong-doing.

Now, an issue that arises from the need to *inculturate* the *communion*-**identity** of the church in Africa and to make her *relevant* and *responsive* to the experiences of the marginalized, the alienated, the estranged, the discriminated, the offended and the hurt, victims of socio-political, cultural, economic processes etc. on the continent is that of ***method:*** *what must be done to inculturate the church-family of God and make it real* and *relevant? How may one do it?*

Indeed, the image and identity of the church as *family of God,* cannot be a mere affirmation, it must engender a mission, an action and a ministry; for as the Holy Father observed in the opening mass of the synod, *it is ideological to merely make proposals without moving on to action (fare proposte senza passare all' azione è un' ideologia).* Accordingly, reflecting on the theme of the synod to the Roman Curia, as mission-statement for the church in Africa, the Holy Father observed: "*The task of Bishops was to transform theology into pastoral care, namely into a very concrete pastoral ministry in which the great perspectives found in sacred Scripture and Tradition find application in the activity of Bishops and priests in specific times and places."*[3] In doing this, however, it is very important that one does not confuse "***pastorals***" with "***politics***"; and it is clarity about one's identity and the consciousness of being a church with a specific and an irreplaceable identity, namely, *a church-family of God,* which safeguards against confusing "***pastoral action*** with "***political action***".

This, indeed, is how the first synod and its adoption of the ecclesiological model: *church-family of God,* finds its greatest significance and pertinence; and these reside in how the ecclesiological model: *church-family of God,* makes a distinction between ***sociology*** and ***cultural anthropology,*** on one side, and ***theology,*** on the other side.[4]

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[3] *Address of His Holiness Benedict XVI to the Members of the Roman Curia.....,* 21 Dec. 2009.

[4] For purely immanent actions cannot attain the needs of man, nor offer solutions to

The imagery underlying the ecclesiological model, *church-family of God,* is undoubtedly a socio-cultural (and a biological) one which evokes biological and socio-cultural realities of parenthood, generation and filiation, kinship and fraternity, as well as networks of relationships which are generated by these biological and social processes. It also evokes such values as care for others, solidarity, dialogue, trust, acceptance and warmth which are manifested among members of a family. But predicated to God, as his family, and variously rooted in the Christology of the ***mystical body of Christ*** (in ***confiliation*** and in ***confraternity*****)** and in the mystery of redemption (divine love and pardon)**,** *church-family of God* is a theological reality (category).[5] Accordingly, the encounter of this ecclesiological model with anthropologies, cultures, politics and the researches of social science, even when the discussion is about anti-communion and anti-community experiences, such as crime, penal justice and prison, must lead to this theological reality and paradigm of communion: *church-family of God,* taking up (assuming) what is positive and compatible in traditional cultures and anthropologies, social sciences and politics, and correcting all that is not compatible with it. In this sense, the *how* and the method of pursuit and realization of the values of *church-family of God* in society, especially for the marginalized, calls for great discernment and consistency with faith and Church-practice.

As the church in Africa left the second synod then, it hoped that her promotion and pursuit of *reconciliation, justice* and *peace,* made particularly Christian by their rooting in love, mercy and pardon (values of the ***kingdom***) would restore wholeness and integration to the church, to the continent and its people, especially those *marginalized* for various reasons in society.

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the problems of society. For, "Ignorance of the fact that man has a wounded nature inclined to evil gives rise to serious errors in the area of education, politics, social action and morals..... The conviction that man is self-sufficient and can successfully eliminate the evil present in history by his own action alone has led him to confuse happiness and salvation with immanent forms of material prosperity and social action" (*Caritas in veritate, #34)*.

[5] On the ecclesiology of *Church-family of God* and its discussion, one may look at: F. Appiah-Kubi, *L'Eglise, famille de Dieu: un chemin pour les églises d'Afrique,* Karthala, Paris 2008; A. Amazani Bishwende, *Eglise famille de Dieu. Esquisse d'une Ecclésiologie africaine,* L'Harmattan, Paris 2001; B.-D- Yanoogo, "Eglise-Famille en Afrique: Originalité du concept", *Revue de l'Institut Catholique de l'Afrique de l'Ouest,* 14-15 (1996) 139-150. M. Dujarier, *L'Eglise – Fraternité. 1: Les origines de l'expression adelphotès-fraternitas aux rois premiers siècles du Christianisme,* Cerf, Paris 1991. B. Ndiaye, *Jésus "Premier Né d'une multitudes des frères. Etude de Rm. 8,28-30,* Institut Catholique de Paris, Paris 1996.
On "*confilation",* one may read the synod intervention of Archbishop of Obinnah of the Archdiocese of Owerri.

3. Politics (Political Action) and Religious Faith (Pastoral ministry)

The distinction between Church and State (the autonomy of the temporal order)[6] is fundamental to Christianity. It was Christianity that did introduce the novelty, completely original in character, of distinguishing between *political power* and *religious power,* following its understanding of the human person as created *body* and *spirit.* Accordingly, the Church has always maintained her ***freedom of speech*** and ***action,*** and her autonomy before *political power,* which she respects and whose respect she promotes, especially, when it serves the *common good,* and when *civil law respects natural law.* Thus the Church and the State are two distinct, but inter-related spheres.

On the issue, then, of justice in society, the Church recognizes the competence of the State to deal with it. In the words of Pope Benedict XVI, "the just ordering of society and the state is the central responsibility of politics; for justice is both the aim and the intrinsic criterion of all politics, where politics is more than a mere mechanism for defining the rules of public life. The origin and the goal of politics are found in justice, which by its very nature has to do with ethics. The State must inevitably face the question of how justice can be achieved here and now".[7]

Now, although just society must be the achievement of politics, and not of the Church, yet the promotion of justice through efforts to bring about openness of mind and will to the demands of the common good is something which concerns the Church deeply.[8] In this sense, Saint John Paul II would note in 2000, in his Jubilee message for prison that "the unease and strains felt in the complex world of the administration of justice and, more, the suffering attached to prison life, show that there is still much to be done".[9] This mean that practical reason in whose exercise politics seeks to ensure justice in society "must undergo constant purification, since it can never be completely free of the danger of certain ethical blindness caused by the dazzling effects of power and special interests".[10] This purifying force for reason comes from faith; for "faith, by its nature, is an encounter with God: an encounter which opens up new horizons extending beyond the sphere of reason… Faith liberates reason from its blind spots, enabling reason to function effectively and to see its proper object clearly".[11] Here politics and faith meet! And so, for example, through the Social Doctrine of the Church, faith purifies reason and contributes, here and now, to the attainment of what is just and true about the human person, its society, its

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6 Cf. *Gaudium et Spes,* 36.
7 *Deus Caritas est,* § 28
8 *Ibidem.*
9 John Paul II, *Message for the Jubilee in Prisons* [MJC], 9 July 2000, § 5.
10 *Ibidem.*
11 *Ibidem.*

life, its development etc.; for, even in the most just society, the virtues of love, pardon, mercy etc. prove necessary, just as the re-establishment of justice, the reconciliation of peoples, *restorative justice,* the restoration of communion and the building of an integrated community are indispensable in the life of a society.

Thus, to the prevailing penal codes of societies which seem to extol predominantly a "*justice that punishes*", the Christian faith proposes, in the manner of the bible, a "*justice that justifies*", that repairs and restores communion and fellowship: justice that is restorative through reconciliation. In fidelity to the Lord and to his Word, Christian solidarity will not run the risk of being "*a feeling of vague compassion or shallow distress at the misfortunes of so many people, both near and far*"[12], in a contemporary culture that easily alienates, marginalizes and produces outcasts.[13] Rather, let us see in the reconciling presence of Christ the principal driving force behind integration and restoration to communion in human society, and the authentic development of every person and of all humanity[14].

4. Restorative Justice, Re-thinking Reconciliation and Justice as God's

4.1. Reconciliation in Sacred Scripture.

Scripture bears witness to various forms of reconciliation by means of agreements[15], in which:

- the offender admits wrongdoing and asks for pardon, thus recognizing the offended to be in the right (righteous);
- the offender disclaims wrongdoing and thus initiates an arbitration to establish who is in the right;
- the one who has been wronged pardons unilaterally and sees to the cessation of hostilities, establishing peace and reconciliation.

In all of these cases though, reconciliation, as a passage from hostility to peace, from alienation to communion, is not a sacrifice of rights; and it does not replace justice. Rather, it is the re-establishment of justice and is the fruit thereof.

Often, however, when God reconciles, *reconciliation* has the character of a free and a gratuitous move, which God initiates towards humanity; and its purpose is to repair and to restore the communion that covenant establishes, but which sin threatens and breaks up.[16]

The teaching of St. Paul to the Corinthian church on this matter is very

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12 John Paul II, *Sollicitudo rei Socialis,* § 38.
13 Cf. DA § 387.
14 Cf. CV § 1.
15 Cf. Bovati, P., *Ristabilire la Giustizia,* Analecta Biblica 110, PIB Roma, 1986.
16 Cf. Peter Turkson, *Relatio ante Disceptationem,* II Synod for Africa, Vatican City October 2009.

instructive: "If anyone is in Christ, he is a new creation; the old order has passed away, behold the new has come. All this is from God, who through Christ reconciled us to himself and gave us the ministry of reconciliation; that is, God was in Christ reconciling the world to himself, not counting their trespasses against them, and entrusting to us the message of reconciliation. So, we are ambassadors for Christ, God making his appeal through us. We beseech you on behalf of Christ, be reconciled to God". (2 Cor. 5:17-20).

Reconciliation, then, is a divine act, which we (humanity) experience, and in whose experience we become its ministers and ambassadors.

a) The Apostles' Experience of Reconciliation

The Gospels had presented the life and ministry of Jesus as the Father's work of salvation for humankind. The disciples of Jesus were the first called to experience the Father's offer of salvation in Jesus; and they did this in various ways, including forgiveness and reconciliation. Jesus' greeting of "peace" to the disciples on the morning of the Resurrection (Jn 20:19-21), for example, was both the pardoning of their betrayal and abandonment of Jesus, as well as the restoring of friendship.

Jesus did not require an admission of guilt on the part of his disciples. There was no request for pardon; and no apology was proffered. There simply was a benign glossing over of all unpleasantness. In its place are given a free pardon and a conciliatory greeting of peace.

Reconciliation here is a free and an unmerited conciliatory gesture, which the offended (Jesus) initiates towards the offender (the disciples). Now commissioned to preach the Gospel to the ends of the earth, the disciples-apostles of Jesus carried out their mission as "evangelizers who had been evangelized", and as "ambassadors of reconciliation who had experienced reconciliation".

b) Saint Paul's Experience of Reconciliation

Later, Paul came after the disciples-apostles of Jesus as a preacher of the same offer of salvation in Jesus. But having received this commission to preach Jesus in the particular circumstances of his encounter with the risen Lord on the road to Damascus, Paul would also understand the offer of salvation in Jesus by the Father as the Father's act of reconciliation[17]. For, as he would admit: "I was once a blasphemer, a persecutor, a man filled with arrogance; but because I did not know what I was doing in my unbelief, I have been treated mercifully, and the grace of God has been granted me in overflowing measure..." (1 Tim 1:13-14).

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[17] Cf. Paul's confession: "You have heard, I know, the story of my former way of life in Judaism. You know that I went to extremes persecuting the Church of God and I tried to destroy it.... But the time came, when he who had set me apart before I was born and called me by his favour chose to reveal his son to me,.... (Gal 1:13-16).

For Paul, then, the experience of salvation was also a passage from hostility and enmity towards Christ and his Church to belief in Christ and fellowship with his Church. This passage from enmity to fellowship constitutes reconciliation; and it is an undeserved experience which only God brings about and leads a person to make. In this, Paul considered himself an example for those who would later come to faith in Christ (cf. 1 Tim 1:16).

4.2. (Vertical) reconciliation with God and (horizontal) with Human Beings

In Jesus: in his life and ministry, but, especially, in his death and resurrection, Paul saw God the Father reconcile the world (all things in heaven and on earth) to himself, *discounting* the sins of humankind (cf. 2 Cor 5:19; Rom 5:10; Col 1:21-22). Paul saw God the Father reconcile Jews and Gentiles to himself in one body through the cross (Eph 2:16). But Paul also saw God reconcile Jews and Gentiles, creating one new humanity in place of two (Eph 2:15; 3:6).

Thus, the experience of reconciliation establishes communion on two levels: communion between God and humanity; and since the experience of reconciliation also makes us (reconciled humanity) "ambassadors of reconciliation", it also re-establishes communion between men.

a) Reconciliation between God and Men

The creation of humanity in the image and likeness of God, the election of Israel to be "God's portion and inheritance", and the redemption of humanity by Christ and its sealing with the Holy Spirit (cf. Eph 1:13; 4:30) draw humanity into communion with God.

When humanity is alienated and estranged from God through sin (disobedience, idolatry, rejection of Jesus), reconciliation takes the form of forgiveness; and it is the work of God[18]. It is God who initiates reconciliation with sinful and estranged Israel and humanity, bringing them back to himself (Ps 80:3, 7, 19; Hos 11; 14) "to live for the praise of his glory" (Eph 1:12) and according to "the likeness of God in true righteousness and holiness" (Eph 4:30); and Jesus, "who did not know sin, but for our sakes was made to be sin" (2 Cor 5:21; Gal 3:13; Rom 8:5) remains our means of reconciliation. This, however, is the work of God's love and mercy.

b) Reconciliation within the Human Family

The importance of conversion and its consequences for one's life and reconciliation is a constant theme in the gospels.

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[18] In this sense, God is like the shepherd who searches for a lost sheep. He is like the woman who searches for a lost coin; and he is like the father whose love provokes the return of his prodigal son (cf. Lk 15). It is like Jesus who finds Zachaeus in the sycamore tree and calls him down (Lk 19:5).

Briefly referring to the story of Jesus and Zacchaeus (Lk 19), one recognizes that the encounter between Jesus and Zacchaeus did not only lead to a conversion that established communion between Zacchaeus and the Lord. That encounter led to a conversion which also restored Zacchaeus' relationship with his own people. In this new relationship, his vision of his people also changed: they were brothers not to be exploited or defrauded.

Reconciliation, then, is not limited to God's drawing of estranged and sinful humanity to himself in Christ through the forgiveness of sins. It is also the restoration of relationships between people through the settlement of differences and the removal of obstacles to their relationships in their experience of pardon, love and mercy. This, indeed, is the distinctive feature of reconciliation in the ministry of Jesus Christ.

Through forgiveness the members of the human family build the community of the reconciled (Eph. 2:16-19), where mutual forgiveness reflects the forgiveness granted by the heavenly Father (Mt. 6:12, Lk. 11:4), whose love and mercy give rise to our reconciliation.

Here is a spirituality of reconciliation which must become the disposition of the "minister of reconciliation" and which can inspire ministries towards those marginalized by the commission of crimes and as victims of wrong-doings. For, in a Church, which is a family in communion, reconciliation becomes not a state or an act, but a dynamic process, a task to be undertaken every day, a goal to strive after, an unending setting out to re-establish, through love and mercy, broken friendships, fraternal bonds, trust and confidence. This is the inspiration and the driving force of Christian prison chaplaincy!

These biblical teachings about reconciliation and pardon certainly do not belong to any judiciary or penal system. But they have their own consistency and validity; for set within the story of salvation, they describe the situation of sinful humanity (every man and woman) before a merciful God. Thus its premise is that all, without exception are in need of pardon, mercy and love, which only God gives and invites us to imitate. The challenge then lies in the extent to which our civil and penal institutions can be affected by such a Christian teaching.

5. The mission of the Church for reconciliation (servant of Justice and Reconciliation):

The Church recognizes that the marginalized – among whom we find victims of violence and prisoners[19] -- are called upon urgently to give witness to the charity and truth of Christ by promoting justice and reconciliation with God and with their neighbour.

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[19] Cf. DA § 207.

On her part, the Church needs to carry out the service of purifying the concept of *justice* of false forms which have developed as a result of the secularization of the concept[20], and which are so widespread. Apparently, the spread of the "Spirit of Capitalism" had the effect of alienating the concept of justice from any transcendental roots[21]. The ethics of economics, for example, was rationalistic and individualistic. Its central concern was profit; and it was separated from the demands of solidarity and from all ethical or religious bonds.

Accordingly, the whole notion of social justice was eliminated; and justice applied to the conventions of negotiated contracts within the framework of the law of supply and demand, with no restrictions on individualistic enterprise. The state merely enforced public order and the fulfilment of contracts, while remaining rigorously neutral as regards their content[22].

By contrast, the justice of Christian ministry (*diakonia*) is the *justice* of the Scriptures, the *justice (righteousness)* of God and of his kingdom. It is *justice* which *justifies*, mending broken relationships by overlooking infringements (on justice) which hurt relationships and destroys communion. And, its critical characteristic is that it is *justice rooted in divine love and exercised in mercy.*

It is this critical characteristic which must inform all Christian "ministry (service) of justice", disposing the wrong-doer to ask for pardon and to find forgiveness from the offended. In the end, as St. John Paul II wisely taught us, justice is not enough in the fashioning, restoring and maintenance of communion and relationships. It needs mercy and love; and it is the presence of the Spirit, as a gift and as a force of love, which affirms *justice.*

6. Resources for the Service of Justice and Reconciliation

6.1 Prayer

It is clear from the above that the search for justice and reconciliation by Christian believers implies the raising of their arms towards God in prayer"[23]. Indeed, it is the affirmation of biblical revelation that the present state of human sinfulness and wounded hearts puts justice beyond the reach of human strength and endeavour, and makes it a gift of God and a revelation of his saving grace.

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[20] The concept of justice has been secularized before to mean: merely "the law of the stronger; a social compromise to avoid greater evils; and the virtue of impartiality in the general application of the one law, without any regard for natural justice". *Sacramentum Mundi* 3, 235.

[21] Cf. Paul VI, *Encyclical letter Populorum Progressio*, § 26.

[22] *Sacramentum Mundi* 3, 236.

[23] CV § 79.

6.2 Christian Humanism

Catholic prison ministry cannot ignore the principle of the dignity of the human person, who is the protagonist of all social life, and the beginning and end of social institutions[24]. This principle is not only rooted in Christian anthropology; it is also an undeniable tenet of our faith. Accordingly, the dignity and the development of the human person, created in the image and likeness of God and raised to a supernatural end that transcends earthly life,[25] are central to the Social Teaching of the Church. This central message of the Social Teaching of the Church engenders a *new humanism*[26] that must inspire social institutions, including *penal structures.*

There is then the need to consider the basis and objectives of our penal systems, of detention/imprisonment, capital punishment, reformation and rehabilitation centres etc. by all sectors of society: jurists, philosophers, cultural anthropologists, ethicists, politicians and also agents of pastoral care. In the latter case, the issue is how to give adequate expression to Gospel and Christian values with and within the available and existing earthly means and systems. And here, one may not overlook some legislative advances in some nations which have been inspired by reflections at these meetings to formulate local and national policies in favour of a more human penal system[27].

6.3 Gratuity

The third resource for prison ministry is *gratuity*. Pastoral care for prisoners and the marginalized is also rooted in *gratuity;* the latter being an extension of solidarity and responsibility for justice and the common good[28]. *Gratuity* is an expression of real human fraternity ordered to development[29]. The unity of the human race, a fraternal communion transcending every barrier, is called into being by the word of God-who-is-Love. Thus gratuitousness and the *logic of gift* do not exclude justice. Neither do they lie outside it. Rather, they constitute that expression of fraternity without which no social structure or institution can be authentically human[30]. Gratuity nurtures the daily Christian service of others, especially in situations that seem insoluble.

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24 Cf. CSDC § 106.

25 Cf. CV § 19.

26 CV § 78: "*only a humanism open to the Absolute can guide us in the promotion and building of forms of social and civic life … without exposing us to the risk of becoming ensnared by the fashions of the moment*".

27 DA § 430.

28 CV § 38.

29 Cf. CV § 34.

30 Cf. CV § 78.

7. Conclusion

In the name of the Church, may I thank you for your generous, hidden, arduous and often frustrating ministry. Remembering that the Son of Man in his glory will himself thank you: "I was in prison and you visited me" (Mt 25:36). Thank you for carrying out this mission of the Church and making the good news of Christ's reconciliation resonate within prison walls, in the lives of prisoners and their families, of victims and their families, and somehow in the larger society, too.

Secondly, in the name of the Pontifical Council for Justice and Peace, I hope we can make the Church's Social Doctrine more available for prison pastoral ministry.

Finally allow me to conclude with the questions which might now launch our dialogue: In what order would you put key words like "peace - truth – justice – reconciliation"? Why would you begin or end with reconciliation? As a Catholic prison chaplain, is your answer different from what a policeman, a judge, a prison administrator, a guard, a victim of crime or a convicted prisoner would say?

Chapter 17
Catholic Social Teaching's Contribution to Ethics in the Context of Criminal Justice

Fred van Iersel

1. Introduction: Crime and/or Sin?

In the Italian city of Siena one may find a famous fresco named *Allegory of Good Governance*, designed in 1338-39 by Ambrogio Lorenzetti.[1] This fresco shows a summary of Catholic Social Teaching and the fruits of a practice based on it. Another wall in the same medieval city hall in Siena expresses *the Allegory of Bad Governance*. On this latter fresco, one sees poverty, crime and conflict. As the fresco of good governance shows, Catholic Social Teaching is a type of social ethics. As such it contains a comprehensive approach of the ways in which societies, enterprises and governments could and should be structured and how they should be governed.[2] A key element in Catholic Social Teaching regards the ways societies and governments must deal with crime.

1.1 The Moral Basis of Law

Of course, from the point of view of a secular positivistic philosophy of law, in a strict interpretation, a crime might be considered as a trespass against law, regardless whether the law itself is *morally* just. Catholic Social Teaching does not take over this 'legal positivism'.[3] According to Catholic

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1 A reproduction of the fresco Allegory of Good Governance may be found in: Pontifical Council for Justice and Peace (2004*). Compendium of the Social Doctrine of the Church*. Vatican City: Liberia Editrice Vaticana. The cover also contains a short explanation of images in the fresco.

2 An authorized summarizing survey of Catholic Social Teaching may be found in: Pontifical Council for Justice and Peace (2004). *Compendium of the Social Doctrine of the Church*. Vatican City: Libreria Editrice Vaticana. After the publication of this Compendium, Pope Benedict XVI has published his Social Encyclical *Caritas in Veritate* (2009), and Pope Francis has published the Social Encyclical *Laudato Si*' (2015).

3 In the twentieth century, legal positivism has taken on different forms. One of the paradoxical forms in our times is the affirmation of the normative validity of human rights just *because* these are written down in the Universal Declaration of Human Rights. This is paradoxical, because Human Rights have been articulated after the totalitarian abuse of positive law during WWII – which was supposed to be legitimized by legal positivism of H. Kelsen-, but for a *moral* reason. Once they had been declared, in large parts of secular ethics they have become part of an absolutist type of ethics. Catholic Social Teaching, on the contrary, does accept

Social Teaching, it is not the case that laws are simply valid because they have their source in law. Instead, it presupposes and requires that laws should have a proper moral basis[4] and that the legislator has a moral legitimacy too, as mostly is the case in democratic constitutional states. But even then unjust laws can exist – which in fact is an act of violence.[5]

If and only if these conditions are met, a trespass against law also implies a trespass against 'moral law'. In that case, a crime can be assumed to be a sinful act as well; but of course this argument may not be turned around. Ethically speaking, immoral acts cannot be justified by the mere fact that they are not forbidden by law. For there may be many sinful, morally wrong, acts that are not unlawful and it makes no use to define all these as a crime. Many of these should be dealt with in interpersonal relationships or at a broader and deeper cultural level. So the concepts of crime and sinful act can never be completely identified.[6]

These first thoughts about the definition of crime illustrate the need for an ethical theory of justice. If laws do rob the population of a state from human rights, and the population does resist or deny these illegitimate laws, then the population is right and the legislator is wrong.

1.2 Retributive Justice

This being said, Catholic Social Teaching does recognize the right and obligation of legitimate states to punish crimes and to help create a morally justifiable social, political and legal order. *Pax ordo justitiae*:[7] peace is the fruit of a just order. The justice meant here is not an accidental series of single acts, but it is an order, a structure, including a legal system. St. Augustine[8] added to this: *pax ordo tranquillitatis*: peace is an order of stability.[9] So inside Catholic Social Teaching, the tension between pursuing stability and pursuing justice is well known from its authoritative sources.

For the sake of the argument let us therefore presuppose in this article that both a legislator and the penitentiary system it has created do have

Human Rights, including UDHR, but it also explains *why* it accepts these ands *why* it is important that they are promulgated in form of a positive law, such as a treaty.

4 Grossi, P. (2004), Legge positive. In Centro di Ricerche per lo studio della dottrina sociale della Chiesa, *Dizionario di dottrina sociale della Chiesa. Scienza sociale e Magistero.* pp. 403-406.

5 Pontifical Council for Justice and Peace, (2004), *o.c.*, nr. 398.

6 This approach has been elaborated thoroughly in Maritain, J. (1951). *Man and the State.* Chicago: Chicago University Press. This view is also expressed in Pope John XXII's Social Encyclical *Pacem in Terris* (April 11th, 1963), chapter II.

7 Is. 32: 17

8 In this article, classical theological authors, especially St. Augustine and St. Thomas Aquinas. are quoted from their standard works without referring to specific editions.

9 St. Augustine, *De Civitate Dei*, 19,13.

a substantial degree of moral legitimacy, and that promulgated laws defining crime are morally justifiable. Let us suppose they are not just the legal expression of power relations. Only in this case punishment of crime may be justifiable, provided it is just, lawful and proportionate. These concepts of punishment presuppose a concept of justice that is basically retributive. The basic structure of this style of argumentation is that in the past some injustice has occurred and that the legal order does require that the punishment should equalize the proportion of the injustice previously done. Thus the basic concept of retributive justice implies looking into the past. It implies a focus on past injuries and offenses. In fact, legal justice (*iustitia legalis*) largely is reactive and retributive. It *is iustitia ex post*.

Catholic Social Teaching also acknowledges the principle of proportionality – implied in legal justice - as an element of Justice and law which in fact is a key element in this retributive type of justice. The principle of proportionality is likewise retributive and therefore retrospective by nature. Catholic Social Teaching looks beyond this and specifically it looks beyond the retrospective paradigm of justice. It asks two more questions. The first of these is: in the present, what does justice towards both the victim and the perpetrator require? This is about the need to help victims of crime to cope with the consequences, and at the same time it is about a just treatment of perpetrators in detention. And the second question: how can the future of both the victims and perpetrators – separately or in a mutually connected sense – look like from the point of view of Catholic Social Teaching?

Thus, first of all, the legal decision to punish a crime is based on a concept of justice with a strong retrospective element and on the basis of the idea of a balance: the idea of proportionality.

1.3. Doing Justice towards Detained Persons

Secondly, decisions about the treatment of prisoners during detention may be based on a combination of two types of moral reasoning. The first is a concept of justice like maintaining human rights of prisoners, which have to be implemented regardless of the person who has committed the crime and regardless the nature of the crime this person committed. This element of justice is based on the intrinsic nature of human dignity. It has its roots in Judeo-Christian anthropology, because at the basis of the intrinsic nature of human dignity is the conviction that human persons have been created by God after His image and likeness, and that *therefore* a human person must be thought of as worthy of being respected. The second motivational element in the treatment of prisoners is compassion, which I pragmatically define as the willingness to soften justified sanctions, for example because it is not only the victim but also the perpetrator that

suffers from the committed crime.[10] It can be perceived in contemporary empirical reality too.

1.4. Adding Reconciliation?

Thirdly, social and political decisions about the future life of prisoners do have an even more complicated moral basis. To begin with: once a punishment is finished, retributive justice has been done. Society and state should not prolong the punishment. Instead it is a matter of enlightened self-interest to help former prisoners to reintegrate into society, because this limits the risks of relapse and promotes the security of society. But beyond these motives derived from retributive justice and enlightened self-interest, there is another motive: reconciliation. Here is the focus of this article: to consider paths to reconciliation as these are presented in Catholic Social Teaching.

To elaborate this, we will first of all take a look at Christian anthropology as a framework for Catholic Social Teaching (par.1); then we look at the content of Catholic Social Teaching itself (par 2), to end up with some reflections about reconciliation as a task of prison chaplains (par. 3).

2. Christian Anthropology on goodness and evil[11]

Catholic Social Teaching has always been in search of the good life, a life expressing the quest for the morally good, the truth, and the beauty in their interrelatedness. In accordance with the Gospel and the Christian tradition, a morally good life implies an ideal of moral perfection.[12] In His Sermon on the Mount Jesus urges his audience: 'Be therefore perfect, just as your Father who is in Heaven is perfect' (Mt. 5: 48). The perfection Jesus is aiming at in this Sermon on the Mount, is characterized (a) by receptiveness of the blessings given (Mt. 5, 1-12); (b) by acceptance of the huge task of being a light to the world (Mt. 5, 13-16) ; (c) by the appropriation of Jewish Torah and the fulfilment of the Torah by Jesus (Mt. 5, 17-20), by the integration of this Torah into character of the person

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[10] E.g. in Proverbs 26:27. *Contrapassum* has been sketched out in Dante Alighieri's Hell, in which we meet all kinds of persons suffering by their own sins, not by a punishment added to this sins. This phenomenon is known as '*contrapassum*', an expression referring to the boomerang effect of sin. A perpetrator may suffer from the transformation of his own moral identity: evil has become a part of it. Already in the Bible this *contrapassum* is being described. The *anth*-motive provides a perspective on the suffering of those who have committed crimes, too.

[11] Christian anthropology can be found in a concise summary in: Scola, A., Marengo, G., Lopez, J.P. (2000). *La Persona Humana. Antropologia Theologica*. Milano: Jaca Books.

[12] Timmons, M. (2013*). Moral Theory. An Introduction. Second Edition*. Lanham etc.: Rowman & Littlefield Publishers Inc.

in such a way that the person also complies to it without being observed (Mt. 5, 21-32) ; by authentic consistency versus hypocrisy (doing what one says: Mt. 5, 33-37); by resistance against external pressure to adapt to the world (5: 38-42); and by the universalization of love (Mt. 5, 43-48) . by hiding the character in inner life (Mt. 6, 1-18); by putting trust in the transcendent God (Mt. 6 passim), by accepting the demanding commands (Mt. 6, 13- 14) and putting these in practice (Mt. 6, 15-20). And by consistent acceptance of the consequences of discipleship (Mt. 6, 21-29). If the Sermon on the Mount can properly be considered as the summary of Christian Ethics, it certainly points the way to a demanding type of moral perfection. Jesus provides a wide horizon of attitudes and appropriated principles and rules that are presented to us as rooted in inner conviction, and that they require loyalty to God and a good moral conscience which is a phenomenon belonging to inner life.

2.1 The Quest for Moral Perfection[13]

This quest for moral perfection is the main reason why the role of moral virtues is so prominent in Catholic Social Teaching: these express the need of embedding single acts in habits and attitudes – in sum; in the person –, and they imply the need of practices aiming at moral self-improvement. However, in the Christian context, the fruitfulness of attempts for self-improvement through moral virtues depends on 'theological virtues', namely faith, hope and charity. These three virtues are called 'theological virtues', because they cannot be simply acquired by training or education; in the end they are gifts of God that are given by God by means of 'infusion'. This means that the moral virtues, even the cardinal ones – prudence, justice, temperance, and courage – presuppose the three key virtues of receptiveness of transcendence (faith, hope and charity). The human person is called to be receptive of Gods gifts of faith, hope and charity. Through this frame of transcendence-based theological virtues, the moral virtues acquire a horizon of openness, which transforms them from virtues for an active life only to virtues for an active life with openness for a generous life based on giving. This transformation is not a detail: it means that Christian ethics has the potential of transcending an ethics of rights and obligations to an ethics of generosity, giving and forgiving.

According to Catholic Social Teaching, the ideal of moral perfection is both *necessary* as a horizon of human practice, and *impossible* in our earthly existence. Therefore, ultimately, perfection is a gift of the generous God too. In a Christian perspective it is impossible to become a saint through one's own efforts only. Instead, the strife for moral perfection is doomed to

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[13] Mondin, B. (2000), Perfezione Cristiana. In id., *Dizionario enciclopedico del pensiero di San Tomasso d'Aquino*, pp. 510-514.

fail. It is at least doomed not to reach its fulfilment. So inside Christianity there is this double bind of necessity and impossibility.

2.2 The Challenges following from Moral Perfectionism

The basic elements of a perfect life in the standard Catholic version, the Thomistic one, are the protection of life, procreation, gaining knowledge and developing sociability as basic human goods. Since modern Catholic Social Teaching since 1891 has been largely based on this Thomistic interpretation of consequences of natural law[14], it likewise refers to the 'natural law' paradigm in ethics[15] as a way of understanding why all human actions must aim at this perfection. The natural law paradigm implies ethical universalism. Also this paradigm explains why people must avoid evil through proper application of the principle of double effect,[16] of which the rule to avoid situations that create occasions to do evil (*occasio proxima*)[17] is an important part. And natural law provides a framework for dealing with the problem of hierarchy of values[18] through relating values on the basis of an anthropology that offers a larger picture of human acting.

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[14] The study of St. Thomas Aquinas had been prescribed to Catholic Philosophy and Theology by Pope Leo XIII in his Encyclical *Aeterni Patris* (1879). In 1891 the same Pope Leo XIII published the first modern social encyclical *Rerum Novarum*, which in fact was a restart of Catholic Social Teaching, not the start. The choice for Aquinas granted a type of Aristotelian-teleological type of ethics, which provided the basis for a dynamic, but not revolutionary, view on social development and a basis for criticism towards both Liberalism and Marxism.

[15] Schneewind, J.B. (1995), Natural law. In R. Audi. *The Cambridge Dictionary of Philosophy*. Cambridge: Cambridge UP, pp. 520-521. Schneewind summarizes Aquinas' view on natural law: *(..) God's eternal reason ordains laws directing all things to act for the good of the community of the universe, the declaration of His own glory. Human reason can participate sufficiently in God's eternal reason to show us the good of the human community. The natural law is thus our sharing in the eternal law in a way appropriate to our human nature.*

[16] The Principle of Double Effect expresses the rule that a human action which has a good and wrong effect can be right if and only if the action in itself, apart from the effects, is not wrong; if the wrong effects are not intendent by the agent; and if the wrong indirect effects are in proportion to the intended effects (or objectives).

[17] The principle of *occasio proxima* expresses the rule that if a person creates circumstances which facilitates wrong doing, this agent is actually co-responsible for the wrongdoing; the ability is a necessary and sufficient condition for this co-responsibility. This may also imply co-responsibility through omission (not acting when it would have been needed to prevent another person's wrongdoing).

[18] In my observation, the importance of values in Catholic Social Teaching is higher if they (a) are explicitly related to cardinal virtues; if they (b) are universal and not particular by nature; if (c) other values depend on them; if (d) they are multilaterally interrelated; and (e) when they are central in a system of values. As a conclusion the highest values are freedom, truth, justice and love as formulated in the *Compendium of the Social Doctrine of the Church* (see footnote 1).

Finally, it also implies the idea that some actions are intrinsically wrong and do not allow for prudential considerations on the basis of effects of an action (for example abortion).

In sum, this Thomistic moral perfectionism is very demanding indeed in terms of moral intentions and in cultivating the requirements for good intentions.

In this natural law approach of Catholic Social Teaching, as in St Thomas, there is a very subtle relationship between God's compassion and justice. As Aquinas notes, God's compassion is at the very basis of justice, instead of only providing a basis of exceptions to it. The justice people strive for, including the just order of society and state, are fruits of God's compassion. So, if one applies this to contemporary institutional relations, there is no point in exclusively attributing justice to one institution like a state and compassion to another institution like the Church: both of these institutions need a justice based on compassion, but in a different way. Nowadays this insight could provide a common ground for compassion based types of justice in penitentiary institutions in which compassion based chaplaincy has a solid base in potential common ground.

2.3 Moral Perfectionism and Moral Failure

Moral perfection offers a basis for the moral education of convicted prisoners and in preparing them for reintegration into society. Instead of focusing on visible behavior only, such an approach does start with strengthening the inner life and with practicing a virtuous life. Thus it offers a horizon of excellence that promotes a culture of social achievement. But it also teaches how to conduct moral arguments in case of a dilemma in case of a non-idealistic choice. Also it teaches how to avoid evil, which is essential for reintegration after detention. And since it regards human life as a sacred gift, it teaches the respect the value of it as intrinsic instead of instrumental.

However, moral perfectionism will certainly lead to experiences of moral failure. In the Judeo-Christian tradition there are three reasons for this. The first one is the fact that evil precedes the existence of an individual human person. In Christianity, this insight is expressed in the theology of the Fall. The narrative about Adam and Eve tells us that once evil has been introduced in the attitudes and behavior of human persons, it is pre-existent for all human persons: it is part of the human condition that evil already is present in structures, situations and persons. In practice there is no choice to live in a world where evil is completely absent.[19] There will be a shortage of the good (*privatio boni*) in any human life. This insight

[19] Here is why St. Augustine wrote: Et quaerebam, unde malum, et non erat exitus: and I was looking for the origin of evil, but there was no exit. Augustine's, *Confessiones*, VII, 7, 11.

prevents a romantic misunderstanding of the goodness of the human person; this goodness is not being denied, since it is part of the goodness of creation. But there are substantial constraints to the goodness in terms of the reality of the functioning of evil even before the individual starts to choose.

The second reason why moral perfectionism leads to experiences of moral failure is that in the Judeo-Christian tradition it is connected with freedom; this freedom being an important dimension of the way in which the human person demonstrates his/her innate similarity to God, who is free by nature. So there is no moral perfection without moral freedom. But freedom goes with the freedom to choose evil. It is even the case that one of the ways to experience freedom is exactly the choice for evil, as in the narrative of Adam and Eve. This narrative tells about the sin of all sins: the *superbia*, in the form of the will to be as Gods. This choice for evil therefore does not express a single act, but a basic attitude of the human person. So moral perfectionism might seem an oxymoron: it is impossible to combine it with the moral freedom it presupposes, because precisely the nature of this freedom undermines itself through realizing itself.

In spite of this, Catholic Social Teaching is not a type of social Manicheism: the human person is not considered as a passive theatre of good and evil with no free will. Catholic Social Teaching maintains that the original goodness of human persons – as in original creation – is preserved in spite of its historical realism concerning the power of evil. Free will still exists, and although perfection cannot be reached by it, the good or just can still be done. So this second reason does not end up with fatalism, but with a type of moderated anthropological optimism (Aquinas) or with moderated anthropological pessimism (as in Augustine's anti – Pelagian theology of sin and grace).

The third reason why moral perfections lead to experiences of moral failure is the *contrapassum,* the boomerang effect of evil acts. Of course, evil acts may inflict victims and also offend God – both of which effects are serious enough. But any evil act also inflicts the agent. First of all, it does express the sin of *superbia.* Secondly, it also transforms the moral identity of the perpetrator of sin by becoming a part of the identity and the self-awareness of the person. The committed sinful act appears to be irreversible, not only in its effect on victims, but the sin itself appears to contain or even *be* its own punishment: the sin is its own punishment.[20] So moral perfectionism may be longed for, it is impossible to reach it through personal human efforts. The way people experience this is the internally

[20] Dante Alighieri's Hell describes mechanism of sin as follows: a sin may be a punishment and therefore lead to suffering in that a wrong desire stays alive without the possibility of fulfilment, or the other way around: the sin is a punishment because there is nothing else left than the fulfilment of wrong desire.

divided will: they want to act differently from what they are actually doing, which is the Pauline definition of the sinful condition.[21]

In these three contexts the requirements of moral perfectionism[22] may provoke a smile among those in the Judeo-Christian tradition who know about the vanity of human attempts to moral perfection. The result of the combination of these three reasons why moral perfectionism leads to experiences may be the affirmation of the existence of the good will, but without the ability to act accordingly. But paradoxically, exactly this failure may open up three new paths to moral perfection, but in a transformed, redeemed, way. The conclusion then must be that human persons are in need of redemption. There appear to be three paths to it, which actually are not opposite to each other but presuppose each other and they all are mutually intertwined.

2.4 First path to moral perfection: Introspection and Self-Love

Firstly: moral failure may promote introspection. If taken properly, coping with one's own may increase the competence to introspective self-evaluation. This a precondition for moral development. It is important to realize that the experience of moral failure in itself is not a negative one. It is not, as in some forms of psychotherapy, a dysfunctional emotion that people need to get rid of as soon as possible because it would block attempts to live on after experiences with a huge impact. Instead, according to Catholic Social Teaching recognizing faults and acknowledging guilt, already imply a form of moral growth. That is why these should be considered as valuable, in spite of their painful nature. Of course, what I am talking about here, may be the result of a long process; it never will be an easy jump into insight in one self in case of serious faults and guilt. It may even be the case that the self-confrontation with guilt only is possible because at the end of the tunnel there is glimpse of possible forgiveness to hope for. A serious part of the process will be spent building up trust in this forgiveness in order to even start to cope with the boomerang effect of crime on a person's moral identity and to go a path of self-acceptance and healthy self-love as it is presupposed by Jesus in His second commandment (to love one's neighbor as one self).

2.5 Second Path to Perfection: Discovery of Grace

Secondly, the moral failure may appear to be a blessing in disguise: a '*felix*

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[21] St. Paul, *Letter to the Romans*, 7, 14-21.

[22] The three reasons for moral failure are described by St. Augustine is his classical work *The City of God*, book XI, nrs 16, 22; book XII, nrs. 2, 6, 7 and 8.

culpa'[23], a happy fault that may open up the eyes of the failing person that he is in need of God's forgiveness, grace and redemption- namely the beginning of the end of *superbia*. So instead of losing faith due to failures, it may be deepened. The Gospels tell us a lot of this type of stories: the disciples of Jesus apparently seem to be failing in the *sequela Jesu*, in following Jesus. Through this failure they learn about their dependence on God in their search for forgiveness and they learn that this dependence is a secure one, because God will provide forgiveness as the ultimate expression of His reliable compassion. And of course Saint Paul's devout commitment to the Torah – before his conversion – paved the way for his seeing the meaning of Jesus Christ. So, in the context of Thomistic moral perfectionism, it is not primarily a lack of moral seriousness that leads to moral failure, it is the seriousness itself. The higher the moral ideal – like taking up one's own cross while following Jesus – the bigger the chance that failure will occur. But that does not deprive the attempt to moral perfection from its meaning and relevance: it becomes part of a spiritual and moral learning process which paradoxically turns the failure into a part of the way to moral perfection.

2.6 Third Path to Perfection: Ending the Illusion of Moral Superiority

Thirdly, the moral failure may lead to a change of moral attitude towards one's neighbors. A person's failure may be the beginning of the end of a previously claimed moral superiority. In the gospel, Jesus tells us a story about the sinner and the Pharisee. The sinner stands behind a pillar and prays for forgiveness as described above: he has lost his *superbia* already, which brings him close to becoming a saint. But the Pharisee compares himself in a moral superior way with the sinner. And through this attitude of moral superiority he defies not only his dependence on God's grace, but he neither sees that he is in an even worse moral condition than the self-aware sinner. He divides people into good people and bad people, assuming he himself is a good guy.

In fact, this moral superiority paves the way for the scapegoat mechanism: to attribute one's own sin to another person, and try to get rid of this sin by expelling and excluding the scapegoat from the community. As R. Girard has demonstrated,[24] the Christian faith about Jesus' suffering, death and resurrection, is about the end of the scapegoat mechanism: through the self-giving of Jesus, the expelling mechanism becomes powerless. In the resurrection Jesus 'victory over his death as scapegoat was reaffirmed. It turns out that the stone which the builders rejected, has become the chief cornerstone (ps. 118:22; Acts 4: 11).

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[23] Aquinas, Th., *Summa Theologiae* III, 1, 2 ad 3''.

[24] Girard, R. (1977). *Violence and the Sacred*. Translated by Patrick Gregory. Baltimore: Johns Hopkins University Press.

The breaking down of the illusion of moral superiority may become a first step towards the breaking through of the moral insight that all human persons share the same human nature, including a potential to the morally good as well as a participation in moral evil. This in turn may be a key to understand the commandment of Jesus to love one's enemy. In any prison system it may be useful if prison managers and guards and prison chaplains imagine that they have more in common with prisoners than they would want. They may not be convicted because they did not break a law, but they *will* have broken *moral* laws as sinners in a sense that is as bad as the crime of the offenders they are working with. It may be the start of the discovery that one may love the enemy, while distinguishing between the love of the human person on one hand and acts of this person on the other hand. This distinction, which is well known among Catholic prison chaplains, is a key element of Catholic anthropology. A person may have intentions and moral insights that are not, or not properly, expressed in his acts. The difference between the person and this person's acts, however, is needed not only to understand the nature of pastoral guidance of perpetrators of crime, but beyond this: to understand the nature of redemption as it is understood in the Gospel and the Christian tradition. To deliver us from evil, as prayed for in the Our Father, implies the breakdown of the power of our own evil acts over our own soul, our person, our identity. Redemption starts with realizing the non-identity of a person's soul on one hand and his evil acts on the other hand and with the reduction of the *contrapassum*-way of suffering from one's own evil acts by reducing the functioning of the acts in the self-imagination of the prisoner. Thus it also provides a basis for ending the scapegoat mechanism: a new beginning of redemption.

3. Some Basic Elements of Catholic Social Teaching

After having sketched some key elements in Catholic anthropology we will now turn to Catholic Social Teaching.

3.1 The Principle of the Dignity of the Human Person

According to the Catholic personalism, the human person is always living in connection with other persons, embedding both freedom and responsibility in this connectedness.

This connectedness is first of all based on the fundamental unity of creation. It has been created by God as an ordered unity. Within creation as a whole, human persons share with each other a common human nature. This in itself is the primary basis for the unity of humanity. Humanity is considered as one human family, designated to live as a universal brotherhood and sisterhood. The unity of humankind has another foundation, next to the creation as an image of God.

The second foundation of the unity of human kind is the incarnation

of God in Jesus Christ. The incarnation is the ultimate affirmation of God's love for humankind, and of its universal meaning and relevance. Through incarnation the dignity of the human person acquires a double foundation in theological anthropology: the creation as image of God is reaffirmed and fulfilled through the transformation of human nature in the incarnation. Thus Christology provides the second anthropological basis for the dignity of the human person, its intrinsic nature, its universal nature and its entitlement to be protected. The consequences of this theological anthropology of the human person are multiple. First of all, human life may never be a mere instrument. It must be protected at all times, which is why the Church opposes murder, abortion, euthanasia, suicide, and the death penalty. The strict approach is based on the intrinsic value of the human person, who is created by God after His image and likeness and therefore worth protecting. One essential dimension of the dignity of the human person is the freedom of religion and conscience. In Catholic Social Teaching no state may legitimately deny the right to religious freedom and the freedom of conscience which is why many states allow for prison chaplaincy as a safeguard of this freedom and as a means to realize the consequences of this freedom: the participation of worship in one's own denomination, the right to individual pastoral contact with a cleric of one's own denomination, and the right to have group meetings with fellow believers of one's own denomination, apart from worship, such as in catechism.

Catholic personalism is a very important contribution to a good society. It strengthens the role of moral intentions in human acts, it strengthens participation, commitment and involvement. It keeps human beings connected with each other, throughout interaction between levels of societies and government.

3.2. The Principle of the Common Good

The twentieth century has demonstrated that states may derail towards totalitarianism as in Communism, Nazism and Fascism. One of the characteristics of totalitarianism, according to Catholic Social Teaching, is that states impose blind obedience to their citizens. States are not entitled to define ethics, because this would be the beginning of totalitarianism. Instead, secular states themselves live by prerequisites which it cannot guarantee itself.[25] In fact, moral values are provided to them by the ethical cultures in society: it is a consequence of the freedom in secular democratic constitutional states. Thus, states do need and actually have a horizon. Here is where the principle of the common good from Catholic Social Teaching comes in. The notion of the common good provides the

[25] Böckenförde, E.W. (1991). Die Entstehung des Staates als Vorgang der Säkularisation. In id*., Recht, Staat, Freiheit*. Frankfurt am Main: Suhrkamp, p. 112.

moral horizon of states and, when taken seriously, it blocks the imposing of politically correct or politically useful types of ethics through states.

The concept of the common good is very important also in case of choices regarding the exercise of rights. Catholic Social Teaching prescribes that (a) my rights should be in proportion with my duties; (b) my rights and duties must be in balance with rights and duties of other human persons; (c) that all human persons must exercise their rights while aiming at the common good.[26] The first two prerequisites do link the ethics of rights to the ethics of duty – which provides a counterbalance towards a culture of claiming rights only without accepting obligations that come with these rights. The third prerequisite provides a common horizon to human persons with rights: they must share a common goal.

3.3. The Principle of Universal Destination of Goods

The Catholic Social Teaching has expressed its support for private property as a key element of the economic order based on human nature. But property implies a responsibility for the universal destination of goods produced and of services provided.[27] In 1891 Pope Leo XIII elaborated the consequences for modern industrial societies in his Social Encyclical *Rerum Novarum*.[28] This implies that there should be private enterprises, but there should be a social practice based on the rights of workers.

Since 1891, the universal destination of goods as a moral principle in Catholic Social Teaching gradually has been extended to the so called 'preferential option for the poor'[29].

The preferential option for the poor can be regarded as an elaboration of social justice. Social justice adds to previously existing dimensions of justice[30] in that it aims at abolition of structural violence against the poorest. Also it is proactive; this makes it substantially different from legal justice in penitentiary law which is reactive by nature.

The preferential option for the poor expresses a specific form of ethical universalism: it takes the practice of justice towards the poorest as the key measure of justice and as a test case for the other dimensions of justice, including legal justice.

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[26] Thus: Pope John XXIII (1963), *o.c*., Ch. I, nrs. 28-34.

[27] Aquinas, *Summa Theologiae*, I-II (q.100 a.8 ad 3); II-II (qq. 66, 118,119).

[28] All Social Encyclicals in their authorized edition may be found at www.vatican.va

[29] See for a description of the preferential option for the poor*:* Pontifical Council for Justice and Peace*, o.c.: The principle of the universal destination of goods require that the poor, the marginalized and in all cases those living conditions interfere with their proper growth should be the focus of particular concern. To this end, the preferential option for the poor should be reaffirmed in all its force* (nr. 182).

[30] Namely: legal justice or *iustitia legalis*; commutative justice or *iustitia commutativa* and distributive justice or *iustitia distributiva*.

From this perspective, from the point of view of Catholic Social Teaching, penitentiary stems must assure that imprisonment is not abused as an instrument for the social exclusion of those who already before imprisonment were poor and marginalized. Legal justice and penitentiary systems can and should be put to the test of social justice and the preferential option for the poor.

If most people who are detained are among the poorest, what does a penitentiary system in its combat against breaking law add to social justice? How does detention contribute to the prevention of crime through an increase of social justice? Through posing these questions, the perspective on detention could undergo radical change from reactive punishment to proactive social justice and reconciliation.

Of course, also the poor must comply with just laws. But Catholic Social Teaching would add to this that laws are a necessary but not sufficient instrument in the creation of a stable and just social order. Governments and society are challenged to develop broader politics and policies, and to add practices of social justice to the dimension of punishment.

3.4. The Principle of Subsidiarity

The involvement of the human person brings with it the need of the principle of subsidiarity in organizing society and state: responsibilities must be beard at the lowest level possible in institutions and organization, and must be built up bottom-up wise, while maintaining the connection with higher levels in institutions that are entitled to intervene when responsibilities in lower levels can no longer be taken in a proper sense. This is a way to ensure moral commitment of persons by stimulating social participation. Connectedness is not broken down by liberal individualism and its misunderstanding of human freedom, nor by collectivistic ways of imposing responsibilities.

In the context of relations between states and churches, the principle of subsidiarity supports the realization of the freedom of religion. When a government accepts the freedom of religion, it does not interfere in their convictions. But it also lets churches organize themselves independently – in different church orders –.

In the context of services for prison chaplaincy this may turn out in various different structures of these services. Denominations may establish their own organization outside government as an expression of independence from the state, or they develop a degree of autonomous institution inside governmental institutions, in such a way that political abuse of prison chaplaincy is excluded. In the latter case, the principle of subsidiarity is helpful to grant the autonomous governance of these services, and also to guarantee that it is religious conviction that may give its orientation to this organization of chaplaincy and its policies and practices, instead of political conviction or governmental principles of management.

Modern constitutional states tend to use common secular management systems for the governance of prison chaplaincy, and they tend to prioritize these above the conviction based leadership of denominations. There is a risk to this, namely that this approach does not take the two elements of separation of Church and state (structure and conviction) and their interrelatedness seriously enough.

On their side, churches and their respective prison chaplaincy branches and services can be supposed both not to intervene into politics and to respect prison management systems. As to the dimension of their content, churches should refrain from developing strictly political convictions, ideologies or programs. The dialogue between the two types of institutions can and should be based on mutual subsidiarity – which in this case means: mutual aid to keep focused on the proper aims –, on the basis of a separation of domains (transcendent and the secular respectively).

But next to this two-dimensional separation of church and state, a common podium for church and state can be identified. It is the podium of social ethics where dialogue and debate can take place. In theory, social ethics can be a common ground on which both political ethics and religious types of ethics, like Catholic Social Teaching, can meet, have dialogues and even develop types of negotiated cooperation. Such an ethical dialogue will never be easy. For, although ethics may be a common podium, from a religious perspective it is part of religious ethics as well, while from a political perspective, social ethics may look like politics in disguise. In fact, Catholic Social Teaching is perfectly fit for this task. It presupposes the two-dimensional separation of church and state; it respects the secular nature of democratic constitutional states; it respects law. Against these backgrounds Catholic Social Teaching does offer a moral perspective on issues related to the human dignity of prisoners and the consequences for their treatment[31], while at the same it regards the prison population including management and personnel as communities in which all persons have different contributions to make and should be focused on the common good as a common moral horizon for prisoners and their rights, for prison managers, for professionals and for chaplains in penitentiary institutions.

3.5. The Principle of Solidarity

Catholic Social Teaching urges the principle of solidarity. The connectedness of the human person is also the basis for the quest of harmonious solidarity. It implies the willingness to share properties, goods and services. This solidarity is being practiced in small scale communities and institions like

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[31] The already quoted *Compendium of the Social Doctrine of the Catholic Church* states*:* In this regard, the activity that prison chaplains are called to undertake is important, not only in the specifically religious dimension of this activity but also in defence of those detained (nr. 403).

the family, school, and parish. An important characteristic of the Catholic concept of solidarity is that it presupposes a type of unity of humankind which can and should prevail above conflicts. Social conflicts may occur, but they will always require a solidarity of the conflicting parties with each other. The ultimate consequence of this is expressed in the preaching and teaching of Jesus, who taught humankind to love the enemy and to never give up on forgiveness; a divine generosity that according to Christian faith transcends the power of death. Solidarity, therefore is different from blind loyalty to a group to which a person happens to belong. It is universal by nature, due to the common nature of all human persons. But it is initially taught and trained in small scale communities like the family.

The unity of humankind does require universal solidarity. A truly universal solidarity also does require avoiding and diminishing conflict. Persons, groups, institutions, organization, and enterprises should be focused on cooperation. Employers and employees must be willing to seek harmony in spite of differences in interest. Pope Francis writes:

Unity prevails over conflict

226. Conflict cannot be ignored or concealed. It has to be faced. But if we remain trapped in conflict, we lose our perspective, our horizons shrink and reality itself begins to fall apart. In the midst of conflict, we lose our sense of the profound unity of reality.

227. When conflict arises, some people simply look at it and go their way as if nothing happened; they wash their hands of it and get on with their lives. Others embrace it in such a way that they become its prisoners; they lose their bearings, project onto institutions their own confusion and dissatisfaction and thus make unity impossible. But there is also a third way, and it is the best way to deal with conflict. It is the willingness to face conflict head on, to resolve it and to make it a link in the chain of a new process. "Blessed are the peacemakers!" (Mt 5:9).

228. In this way it becomes possible to build communion amid disagreement, but this can only be achieved by those great persons who are willing to go beyond the surface of the conflict and to see others in their deepest dignity. This requires acknowledging a principle indispensable to the building of friendship in society: namely, that unity is greater than conflict. Solidarity, in its deepest and most challenging sense, thus becomes a way of making history in a life setting where conflicts, tensions and oppositions can achieve a diversified and life-giving unity. This is not to opt for a kind of syncretism, or for the absorption of one into the other, but rather for a

resolution which takes place on a higher plane and preserves what is valid and useful on both sides.

229. This principle, drawn from the Gospel, reminds us that Christ has made all things one in himself: heaven and earth, God and man, time and eternity, flesh and spirit, person and society. The sign of this unity and reconciliation of all things in him is peace. Christ "is our peace" (Eph 2:14). The Gospel message always begins with a greeting of peace, and peace at all times crowns and confirms the relations between the disciples. Peace is possible because the Lord has overcome the world and its constant conflict "by making peace through the blood of his cross" (Col 1:20). But if we look more closely at these biblical texts, we find that the locus of this reconciliation of differences is within ourselves, in our own lives, ever threatened as they are by fragmentation and breakdown. [183] if hearts are shattered in thousands of pieces, it is not easy to create authentic peace in society.

230. The message of peace is not about a negotiated settlement but rather the conviction that the unity brought by the Spirit can harmonize every diversity. It overcomes every conflict by creating a new and promising synthesis. Diversity is a beautiful thing when it can constantly enter into a process of reconciliation and seal a sort of cultural covenant resulting in a "reconciled diversity". As the bishops of the Congo have put it: "Our ethnic diversity is our wealth… It is only in unity, through conversion of hearts and reconciliation that we will be able to help our country to develop on all levels". [184][32]

As an application of this text[33] crime can be regarded as behavior in a conflict between a criminal and the state. From the perspective of Catholic Social Teaching one should ask, what the unity of humankind in case of a legitimately convicted and detained criminal would require. It appears, that detention is a form of social exclusion, a continuation of the conflict. The punishment mirrors the crime – at least in its proportion –. But if one wants to avoid the scapegoat mechanism, this punishment should not be the last word spoken to those detained. For there is a fundamental unity between those who perform punishment and those who undergo it. The end of punishment is a common problem of those who actually committed the crime on one hand and those sinners who did not break law on the other side. After punishment, convicted criminals are entitled

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[32] Pope Francis. (2013). *Apostolic Exhortation Evangelii Gaudium*. www.vatican.va

[33] The quoted text was used by then Cardinal Jorge Bergoglio in the context of the need for reconciliation in Argentina's bicentennial, during which victims of Argentina's dirty war and perpetrators still showed their enmity.

to reintegration into society, even if this would require to go the difficult traverse of reconciliation this will be easier if pastoral guidance during detention has opened up hearts and minds for redemption.

Christian anthropology and Catholic Social Teaching provide both a motivation and a normative framework for this huge task, because they accept the intrinsic nature of human dignity, but they know about sin, too. They also know that Social Justice puts legal justice in a more comprehensive perspective. Catholic prison chaplaincy therefore should use the common podium of church and state to ethically discuss crime and punishment as moral phenomena, while providing guidance to rightly convicted prisoners to survive their *contrapassum* and the punishment added to this by the government. Thus they can also help prison management and professionals working in prison to keep their eyes focused on the common good.

Chapter 18
Human Dignity in Prison
Prison Chaplaincy's Core Business as Mission Impossible?

Ryan van Eijk

1. Introduction

In global history there are not many concepts which over the last fifty years have been more important and influential in law and theology than the concept of human dignity even when the recognition of the concept has remained ambivalent.[1] After the horrors of World War II human dignity has become the basic element of all human rights law anywhere, though some say the concept is too vague or even an empty shell.[2] We will show that in Roman Catholic theology human dignity has been seen since Vatican II as the central concept of its social teaching. We will argue that human dignity is indeed core business for the catholic prison chaplain, even in situations where it can be a mission impossible as well.

Detention is by definition a situation in which authorities and individual detainee(s) face each other as a result of a conflict. In most situations however the authorities are more powerful to guarantee that their rights are respected: the detainee is in a much more vulnerable position. Many reports published by international governmental institutions and human rights' NGO's concerning the treatment of prisoners show this reality. And prison itself is by definition a place of conflict where people are forced to live together and to deal with each situation. Without hesitation one can say that most prisons are nowadays still totally institutionalised[3] with a great risk for the human dignity of the inmates. The philosopher Margalit is right when he says: "[T]he demand to respect human beings when directed to the innocent is easy. But the idea of respect to humans is

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1 Two handbooks recently published underline the importance and relevance of the concept: McCrudden, Ch., (Ed.). (2013). *Understanding Human Dignity*. Oxford: Oxford University Press, with legal and (roman catholic) theological accents in the contributions and Düwell, M., Braarvig, J., Brownsword, R. & Mieth, D. (Eds) (2014). *The Cambridge Handbook of Human Dignity, Interdisciplinary Perspectives*. Cambridge: Cambridge University Press, with a more philosophical accent.

2 Düwell, M., Braarvig, J., Brownsword, R. & Mieth, D. Why a Handbook on Human Dignity? (2014). In M. Düwell, J. Braarvig, R. Brownsword & D. Mieth (Eds). *The Cambridge Handbook of Human Dignity, Interdisciplinary Perspectives*. Cambridge: Cambridge UP, p. xviii.

3 See Goffman, E. (1961). *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates.* New York: Doubleday.

most needed when they are not innocent or only partly innocent."[4] This is true even when law and theology are in principle very clear about human dignity in detention, as we will see.

So there is good reason to pay serious and extensive attention to the concept of human dignity in a situation where law and theology meet each other: in the daily practice of prison chaplaincy. First of all, we will have a closer look at human dignity as concept (2). Here extra attention will be given to the concept of humiliation as the opposite of human dignity, for the concept of humiliation can teach us more -as a 'via negativa'- about the meaning of human dignity. Then we present how human dignity is embedded in law (3.1) and in today's Roman Catholic theology (3.2). In the fourth paragraph we will look at difficulties which prison chaplains face concerning human dignity in detention. We use for this section the results of a recent empirical research project in the Netherlands on prison chaplaincy in regards of human dignity (4.1) and the position of the prison chaplain (4.2). Thereafter we will present some guidelines for prison chaplaincy to help improve human dignity in detention circumstances (4.3). Finally, we will finish with some final remarks and a prudent conclusion (5).

2. Human Dignity

Human dignity is a complex concept which is difficult to define. In history of philosophy one can see two different understandings of human dignity:

1- Contingent dignity which is based on status, rank or honour of an individual. This dignity is gradual, relative and comparing, and can be lost.
2- Inherent dignity which is unalienable, universal, and egalitarian, and can't be lost.

To make it even more complex the philosophical foundations of inherent dignity can differ:

a. Theocentric: human dignity is related to God;
b. Logocentric-natural: human dignity is related to human ratio;
c. Anthropocentric: human dignity is related to a man's freedom and autonomy.

[4] Margalit, A. (2007). Human Dignity: Between Kitsch and Deification. Lecture 27-02-2005, Radcliffe Institute, Harvard. In *The Hedgehog Review*, Vol. 9/3, pp. 7-19.

And in academic literature[5] one can find another distinction in concepts of human dignity:

- The heteronomous concept: is based on what from a moral point of view is seen as a good life. The point of reference in this concept is a higher norm or authority. This concept protects man's free will as far as it is conformable with this higher authority. Human dignity is in this concept not a legitimation for man's free will, but limits the free will (for example: humiliation by free will).
- The autonomous concept: is based on man's autonomy, his free will. As long as man can reflect on his situation and can choose freely it is okay, even when this leads to chosen humiliation.

It is clear that Christianity is part of the heteronomous concept.

In today's concept of human dignity every human being is seen as a moral agent, a person, who can distinguish between good and evil, and is responsible for his deeds. "Being somebody, being a human being, is the foundation of the notion of human dignity"[6], or as expressed by the philosopher De Dijn: it starts with "being part of 'the family of man'."[7]

It is also important to note that human dignity is not only about the individual human being but also about humanity as a whole. This means that even if an individual human being agrees with a concrete act or certain living circumstances, this act or these circumstances can be an infestation of the human dignity of this human being.[8] This means that the definition

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5 Birnbacher, D., *Mehrdeutigkeiten im Begriff der Menschenwürde.* http://www.gkpn.de/singer2.htm; Brudermüller, G. & Seelmann, K. (2008). *Menschenwürde. Begründung, Konturen, Geschichte*. Würzburg: Königshausen & Neumann; Nicht, M. & Wildfeuer, A. (2002). *Person, Menschenwürde, Menschenrechte im Disput*. Münster: LIT-Verlag; Horn, C. (2011). Die verletzbare und unverletzbare Würde des Menschen – Eine Klärung. In *Information Philosophie* (Aug 2011/3), pp. 30-41; Malpas J. & Lickiss, N. (2007). *Perspectives on Human Dignity. A Conversation*. Dordrecht: Springer; Ruiz Miguel, C. (2002). Human Dignity: History of an Idea. In *Jahrbuch des öffentlichen Rechts der Gegenwart*, (Neue Folge Vol. 50), pp. 281-300; Schüttauf K. (2007). Menschenwürde – Zur Struktur und Geschichte des Begriffs. In G. Brudermüller & K. Seelmann (2008), pp. 25-41; Tiedemann, P. (2007). Menschenwürde als Rechtsbegriff. Eine philosophische Klärung. Berlin: BWV.

6 Sulmasy, D. (2007). Human Dignity and Human Worth. In *Perspectives on Human Dignity. A Conversation*. Dordrecht: Springer, pp. 9-18, p. 15.

7 Dijn, H. de (2003). De kern van de ethiek: de waardigheid van elke mens. In *Taboes, monsters en loterijen. Over ethiek in de laat-moderne tijd*. Kampen: Pelckmans/Klement, pp. 31-52, p. 32.

8 Famous are the cases of peep shows and dwarf throwing. See Brownsword, R., (2014). Human Dignity from a Legal Perspective. In M. Düwell, J. Braarvig, R. Brownsword & D. Mieth (Eds). *The Cambridge Handbook of Human Dignity, Interdisciplinary Perspectives.* Cambridge: Cambridge UP, pp. 1-22; Müller, J. (2008). Ein Phantombild der Menschenwürde: Begründungstheoretische

or understanding of human dignity is not just a subjective or personal opinion.

If one has to define the concept one could say:

> *Human dignity is the granted (adjudged) respect given to every human being (regarding the primary needs, psychological and physical integrity, freedom, autonomy and self-determination), and which limits the behavior from one human being (or authorities) towards a(n other) human being.*

This definition makes clear that human dignity determines the treatment (and punishment) of a human being by respecting the human being's physical and mental individuality, his freedom and autonomy, and the living conditions which enable this. The definition expresses that there are do's (obligations to protect dignity) and don'ts concerning the treatment and punishment of prisoners (prohibitions). In the word 'granted' one can read a certain freedom of choice concerning the question whether and what dignity is granted, and to whom it is granted. And indeed, there is a certain discretionary space but human dignity is never dependent just on the opinion of one human being or of one group of human beings.[9] However, this discretionary space is limited by existing moral, ethical and legal 'agreements' which transcend the opinion of one human being, group or culture. "Dignity refers (…) to a value-status that is not dependent on the subjective self-perception of an individual or the self-understanding of a particular culture."[10] Neglecting or trespassing these agreements on human dignity is simply 'not done'.[11]

Überlegungen zum Zusammenhang von Menschenrechte und Menschenwürde. In G. Brudermüller & K. Seelmann (Hrsg.). *Menschenwürde. Begründung, Konturen, Geschichte.* Würzburg: Königshausen & Neumann, pp. 117-147.

9 See Benda, E. (1985). Die Würde des Menschen ist unantastbar. In E.-J. Lampe (Hrsg.). *Beiträge zur Rechtsanthropologie.* Stuttgart: Steiner, pp. 23-33. See Brownsword, R. (2014). Human Dignity from a Legal Perspective. [pp. 1-22] and Düwell, M. (2014). Human Dignity: Concepts, Discussions, Philosophical Perspectives [pp. 23-49]. In M. Düwell, J. Braarvig, R. Brownsword & D. Mieth (Eds). *The Cambridge Handbook of Human Dignity, Interdisciplinary Perspectives.* Cambridge: Cambridge UP.

10 Mahlmann, M. (2014). The Good Sense of Dignity: Six Antidotes to Dignity Fatigue in Ethics and Law. In Chr. McCrudden (Ed). *Understanding Human Dignity*. Oxford: Oxford UP, pp. 593-614, p. 603.

11 What we currently see as human dignity is the result of a historical process. The historian Stuurman calls the moment of *kairos* in this process 'the anthropological turning point': the turning point was when people started to see their own culture through the eyes of others (which makes cultural differences rationally understandable) in combination with the idea of a common humanity (a metaconcept of universal attributes and ethical norms). Stuurman, S. (2010).

This definition shows also that human dignity is a paradoxical concept as dignity is described both as a gift and a task at the same time. It is a gift which can be denied and hurt but can't be taken away, and at the same time there is the task to protect it.[12] Dignity is the given point of departure, respectful behavior concerning everyone's dignity is the task.

The conclusion of all this is that detention is always an infestation of a human being's dignity for detention is an imposed and enforced limitation of a human being's freedom and autonomy. This is also the ultimate reason why detention always needs a legitimate and legal justification. In this perspective humane detention means:

1- recognizing and respecting the human dignity of every inmate;
2- avoiding illegitimate and illegal infestations of every inmate's dignity, and
3- minimalizing justified infestations.

Humiliation

The thoughts of the philosopher Margalit about human dignity are interesting for he chooses humiliation as starting point in his reflections on human dignity.[13] His argument for this approach is that he is convinced that it is more important to fight humiliation than to encourage respect. For Margalit humiliation cannot be a by-product of human behaviour, this in contrast to respect. A second reason is that it is much easier to describe humiliating behaviour than respectful behaviour.

In Margalit's view humiliation is a feeling a person can have even when he is not the person who is humiliated. Humiliation is related to indignation and includes the idea that it is unjust behaviour, which should be changed. It affects the self-respect, self-esteem and autonomy of a person. Humiliation is seen by Margalit as excluding a person from the family of man: one treats a person as if he does not belong to the family of man, as if he is not human. In short, one's humanity is denied by humiliation, for example by instrumentalising, bestialising, infantilising or demonising a person. The most far-reaching humiliation is denial and ignorance. This exclusion implicates a loss of control by the humiliated person. This means humiliation includes a loss of freedom and hurts the self-respect. This

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De uitvinding van der mensheid. Korte wereldgeschiedenis van het denken over gelijkheid en cultuurverschil. Amsterdam: Bakker, pp. 13-16.

12 Wildfeuer, A. (2002). Menschenwürde – Leerformel oder unverzichtbarer Gedanke. In M. Nicht & A. Wildfeuer (Hrsg.). *Person – Menschenwürde – Menschenrechte im Disput*. Berlin/München: Lit, pp. 37-71, p. 67; Spaemann, R. (1987). Über den Begriff der Menschenwürde. In E.-W. Böckenförde & R. Spaemann (Hrsg.). *Menschenrechte und Menschenwürde.* Stuttgart: Klett-Cotta, pp. 295-313.

13 Margalit, A. (1996). *The Decent Society*. Harvard: Harvard University Press, and (2007) Human Dignity: Between Kitsch and Deification. In *The Hedgehog Review*. Vol. 9 no. 3, pp. 7-19.

corresponds with the definition of the psychologist Lindner: "The act of humiliation involves putting down, holding down, and rendering the other helpless to resist the debasement. The feeling of being humiliated emerges when one feels one is unable to resist the debasement and one deems it to be illegitimate as well as unwanted."[14]

3. Human dignity: legal obligation and theological imperative

In this paragraph we will show that human dignity is a central concept in (international/human rights) law (3.1) and in Roman Catholic theology and teaching (3.2). The paragraph ends with some general remarks on the relation between law and ethics (3.3).

3.1 Law: human dignity as an obligation

The international Bill of Human Rights[15] demands respect for everyone's human dignity and creation and protection of conditions for everyone's autonomy.[16] Surprisingly one cannot find in the international Bill of Rights any article which describes either the ground of human dignity or presents human dignity itself as a human right. Reason is that it was -and is- impossible to agree upon the final ground of the human dignity (we do not vote the question whether God exists or not), and human dignity itself is not a right but the basic concept of which the several human rights have been deduced.

The Universal Declaration of Human Rights

The Declaration is adopted by and is addressed to states. The Preamble of the Declaration sees the rule of law as a central necessity to protect and to realize the human rights. This formulation shows that human rights in the Declaration are presented as norms based on the concept of the inherent human dignity of all human beings which at the one side is a reality and at the other side is an ideal which has still to be realized. The Preamble states that the rights in the Declaration are rights of "all members of the human family". However, the concept of dignity is not explained in the Preamble. Though the rights in the Declaration show which areas and aspects

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[14] Wyatt-Brown, B. (2006). Guest Editor's Introduction. In *Social Alternatives*. Vol. 25 no. 1, p. 3.

[15] The Bill of Human Rights consists of the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) with its two Optional Protocols and the International Covenant on Economic, Social and Cultural Rights (1966). The two covenants entered into force in 1976.
Some experts will include the regional treaties on human rights: The European Convention of Human Rights, the African Charter of Human Rights, and the American Convention on Human Rights.

[16] Brownsword (2014).

of human life need protection, they do not tell anything about inherent dignity itself. Article 1 of the Declaration just states:

> *"All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."*

The UN International Covenant on Political and Civil Rights declares in its Preamble on human dignity:

> *"Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,*
> *Recognizing that these rights derive from the inherent dignity of the human person"*

and continues in the articles 7 and 10 stating:

> *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. (Art. 7)*
> and
> *All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. (Art. 10.1)*

Especially the explicit formulation of art. 10.1 shows that there is an awareness that people in detention are in an extremely vulnerable position and need extra attention and care regarding the protection of their dignity.

The Mandela Rules

The Mandela[17] Rules are a revision (approved in 2015 by the UN General Assembly) of the Standard Minimum Rules for the Treatment of Prisoners (SMR), the leading international principles on the treatment of prisoners, which had not been updated since they had been drafted in 1955.[18] The

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[17] The Rules honour the late South African President Nelson Mandela, who was imprisoned for 27 years.

[18] The Mandela Rules are built on the developments since 1955 which include the adopted international treaties (the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and its Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), as well as the procedures to implement various standards and norms specifically related to criminal justice (the Standard Minimum Rules for the Treatment of Prisoners,

stated objective and purpose of the Mandela Rules is to "[s]et out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management."[19] These rules are the result of years of extensive consultations and negotiations between intergovernmental organizations, NGO's, and independent experts. The document starts with preliminary observations to present what the intention of the SMR are: to set out generally accepted good principles and practice in prisoners' treatment, to stimulate and to overcome difficulties.

The Mandela Rules emphasize the need for improvement on several thematic areas. The first issue which is identified for improvement is the respect for prisoners' dignity and value as human beings.[20] Part I, which is applicable to all categories of prisoners[21], starts with basic principles of which Rule 1 states:

> *All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.*

This rule links the principle of respecting every prisoner's dignity with the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment[22], which is conform the preamble of the Universal Declaration and the article. This is important to note for the Rules are so called 'soft law' which means that they don't have legally binding force. However, what Rule 1 states is also binding hard law as written down in the different binding conventions.[23]

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the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Basic Principles for the Treatment of Prisoners, and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)).

19 *See id*. at 8.

20 The other mentioned areas are: medical and health services; disciplinary action and punishment; investigation of deaths in custody and allegations of torture; protection of vulnerable groups; access to legal representation; complaints and independent inspections; replacing outdated terminology; and training of staff to implement the Rules.

21 All categories: criminal or civil, untried or unconvicted, subject to security or corrective measures. See observation 3 Mandela Rules.

22 Rules 32-34 appeal explicitly to the special and important role of health-care professionals to avoid or report this kind of forbidden treatment.

23 International human rights instruments such as the International Covenant on Political and Civil Rights and the UN Convention Against Torture contain

An important condition to protect every prisoner's dignity is to ensure that every prisoner is identified and known as an individual. As a consequence, the Mandela Rules recommend that prisons maintain a standardized file keeping system, promptly address prisoners' complaints, and allow prisoners to communicate with their family and friends at regular intervals. Rule 2 makes clear that this equality of all inmates has to be assured, also regarding religion[24]:

> *The present rules shall be applied impartially. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status. The religious beliefs and moral precepts of prisoners shall be respected.*

Though all the Mandela rules are saturated by the concept of human dignity, several rules comprehend explicitly the term human dignity. Regime in prison should minimize the differences between life in and outside prison which "tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings" (Rule 5.1). Facilities for personal hygiene have to be provided to maintain the prisoner's self-respect (Rule 18.2) and searches of prisoners and cells have to be conducted in a way which respects the human dignity of the searched prisoner (Rule 50). Procedures

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prohibitions of inhuman and degrading punishment and treatment as do regional human rights instruments like the European Convention on Human Rights (Art. 3), the European Convention Against Torture, the American Convention on Human Rights (Art. 5) or the African Charter on Human and People's Rights (Art. 5). Hard international law is supplemented by soft law which comes in the form of the Minimum Standards Rules.

[24] Rule 65 and 66 of the Rules concern explicitly prison chaplaincy:
Rule 65
1. If the prison contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.
2. A qualified representative appointed or approved under paragraph 1 of this rule shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his or her religion at proper times.
3. Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his or her attitude shall be fully respected.
Rule 66
So far as practicable, every prisoner shall be allowed to satisfy the needs of his or her religious life by attending the services provided in the prison and having in his or her possession the books of religious observance and instruction of his or her denomination.

concerning contacts with the outside world have to ensure fair and equal access with due regard to safety and dignity (Rule 58.2). Last but not least the body of a deceased prisoner should be treated with dignity (Rule 72) and training programs of prison staff should include respecting the human dignity of all prisoners (76.1 sub b).

3.2 Roman Catholic Church: human dignity as a theological imperative

The Roman Catholic Church understands itself as the community of disciples of Jesus with the mission to preach and to live His gospel. The Church's mission is to be a place where God's salvation and mercy is present already, and at the same time is presented. This is why the Church has a double orientation: to honor God and to serve the world. So there is a historical-empirical and a theological component in the Church's existence. The Church convenes people to remember and sets present Jesus and his teachings about God, and to change the world into a world as wished and meant by God. Witnessing (*martyria*), celebrating (*leiturgia*) and serving (*diaconia*) are the main activities to achieve this mission.

The concept of human dignity is a central issue in the Church's mission. The understanding and importance of human dignity in the RC Church has changed fundamentally over the last 100 years.[25] For many centuries the RC Church used the metaphor of the Body for its self-understanding. According to this metaphor every part of the body is important but every part has its own place and task. Dignity, obligations and rights are in this metaphor above all dominated especially by the social rank in which one is born. This understanding of dignity gradually shifted in the twentieth century and has been fundamentally changed by *Pacem in Terris*, the encyclical of Pope St. John XXIII, and by *Gaudium et Spes*, the Pastoral Constitution on the Church in the Modern World of the Second Vatican Council.[26] The current perspective and teachings one can find in the *The Catechism of the Catholic Church* (CCC) and in the *Compendium of the Social Doctrine* of the Catholic Church (CSD).

The Catechism states that the dignity of man rests on his call to

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[25] See Tiedemann (2007); Wildfeuer (2002); Dillmann, R. (2002). Zwischen Selbstüberschätzung und gutem Willen – Der Mensch aus biblisch-theologscher Sicht. In M. Nicht & A. Wildfeuer (Hrsg.). *Person – Menschenwürde – Menschenrechte im Disput*. Berlin/München: Lit, pp. 141-154; Gerwing, M. (2002). Der Mensch ein Geschöpf Gottes? Zum christlichen Menschenverständnis. In M. Nicht & A. Wildfeuer (Hrsg.). *Person – Menschenwürde – Menschenrechte im Disput*. Berlin/München: Lit, pp. 155-176; Devasahayam, J. (2007). *Human Dignity in Indian Secularism and in Christianity*. Bangalore: Claretian, pp 240-389; Punt, J. (1987). *Die Idee der Menschenrechte. Ihre geschichtliche Entwicklung und ihre Rezeption durch die moderne katholische Sozialverkündigung*. Paderborn: F. Schoeningh Verlag; Putz, G. (1991). *Christentum und Menschenrechte*. Innsbruck: Tyrolia-Verlag, pp. 72-120.

[26] See *Pacem in Terris* no. 10 and *Gaudium et Spes* no. 22.

communion with God.[27] Man is created in the image of God[28] and "He is 'the only creature on earth that God has willed for its own sake' and he alone is called to share, by knowledge and love, in God's own life. It was for this end that he was created, and this is the fundamental reason for his dignity".[29] Ethicist David Hollenbach SJ summarizes this very well writing: "Persons possess a worth that deserves to be treated with the reverence shown to that which is holy. As made in God's likeness, human beings possess a sacred analogous to the holiness of God. When we look to the face of a human being we stand in the presence of the sacred. Thus, mistreating a human person is a kind of sacrilege."[30] And "It is in Christ, 'the image of the invisible God', that man has been created 'in the image and likeness' of the Creator. It is in Christ, Redeemer and Saviour, that the divine image, disfigured in man by the first sin, has been restored to its original beauty and ennobled by the grace of God."[31] This divine image is present in every human being.[32]

The common origin of all human beings assures that they are all truly brothers and sisters, and that is why they should respect solidarity and charity.[33] This common origin is also the ground that discrimination is not allowed.[34] The transcendence of human mind, the sacredness of human conscience and the excellence of human liberty are 'the very substance of the person and inherently present within the person'.[35] The human being is by nature a social being for whom it is impossible to survive without a community.[36] Between a person and a community there can exist tensions as both influence each other but the human person has to be the ultimate point of focus of social institutions: "Each community is defined by its purpose and consequently obeys specific rules; but "the human person.. is and ought to be the principle, the subject and the end of all social institutions."[37] However, this does not mean that authority and obeying it have no legitimate place in social life. At the same time, it means that authority and social institutions have to respect the fundamental rights

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27 *CCC* no. 27.
28 Gen. 1:26; *CCC* no. 355.
29 CCC no. 356.
30 Hollenbach, D. (2013). Human Dignity in Catholic Thought. In M. Düwell, J. Braarvig, R. Brownsword & D. Mieth, D. (Eds). *The Cambridge Handbook of Human Dignity, Interdisciplinary Perspectives*. Cambridge: Cambridge University Press, pp. 250-259, p. 252; Dijn, H. de (2003).
31 *CCC* no. 1701.
32 *CCC* no. 1702.
33 *CCC* no. 360 and 361.
34 *CCC* no. 1935.
35 *CCC* no. 1711 and Hollenbach (2013: 253).
36 *CCC* no. 1879.
37 *CCC* no. 1881.

of persons for "No one can command or establish what is contrary to the dignity of persons and the natural law."[38] An authority or institution which does not respect this undermines its own legitimacy.[39]

The same reasoning one can find in the *Compendium of the Social Doctrine of the RC Church*. The Compendium was presented in 2004 and offers the RC Church's view on social, economic and political issues, and which is based on the Church's belief and morality. Just as in the Catechism the Compendium starts right away by pointing at the transcendent character of human dignity: "'Gloria Dei vivens homo': the human person who fully lives his or her dignity gives glory to God, who has given this dignity to men and women."[40]

After presenting God's plan of love for humanity in the first chapter and the relation between the Church's mission and social doctrine in the second, chapter three offers the catholic view on the human person and the human rights. This chapter opens by stating that the Church sees in "in every person, the living image of God himself".[41] "The whole of the Church's social doctrine, in fact, develops from the principle that affirms the inviolable dignity of the human person."[42] Created by God in His image the human person "exists as an "I" capable of self-understanding, self-possession and self-determination."[43] Exactly in this "I" lies the dignity which has to be respected by fellow human beings and society. Human dignity is the basic principle of the church's social doctrine; the principle of human dignity "is the foundation of all the other principles and content of the Church's social doctrine; it is the foundation for the principle of the common good, of subsidiarity and of solidarity.[44] For the status of the human rights this is important:

> *"The ultimate source of human rights is not found in the mere will of human beings, in the reality of the State, in public powers, but in man himself and in God his Creator. These rights are 'universal, inviolable, inalienable'. Universal because they are present in all human beings, without exception of time, place or subject. Inviolable insofar as 'they are inherent in the human person and in human dignity' and because 'it would be vain to proclaim rights, if at the same time everything were not done to ensure the duty of respecting them by all people, everywhere, and for all people'. Inalienable insofar as 'no one can*

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38 *CCC* no. 1901, 2235 and 2237.
39 *CCC* no. 1930.
40 Martino, R. (2004). Presentation. In *Compendium of the Social Doctrine of the Church.* Citta del Vaticano: Libreria Editrice Vaticana, and *CSD* no. 4.
41 *CSD* no. 105.
42 *CSD* no. 107.
43 *CSD* no. 131.
44 *CSD* no. 160.

legitimately deprive another person, whoever they may be, of these rights, since this would do violence to their nature'."[45]

So the defence and promotion of human rights are part of the Church's mission.[46] In this defence and promotion the cooperation with others (non-Catholics) is possible. The right and duty of the political community to punish criminal behavior is not denied by this teaching of the Church, but includes that punishment has always to respect the human dignity of the suspected or convicted human being, and which is the reason why Pope Francis explicitly is campaigning against the death penalty.

There can be only one conclusion drawn: To monitor that the human dignity of all (!) inmates is respected and seen as an explicit task of roman catholic prison chaplaincy: "the activity that prison chaplains are called to undertake is important, not only in the specifically religious dimension of this activity but also in defence of the dignity of those detained."[47]

Hollenbach summarizes correctly in his commentary on the Compendium when writing: "it is striking how strongly the new Compendium of the Social Doctrine of the Church affirms the Catholic Church's commitment to human rights as moral standards to which all nations and cultures should be held accountable. Like earlier church documents, the compendium grounds the link between Christian faith and human rights in the dignity of the human person as created in the image of God. But its discussion has greater theological depth than all previous teachings, which serves to link its ministry in the domain of human rights tightly to its essential religious identity. (…) Human rights, the vocation of every Christian, and the mission of the church are inseparable."[48]

3.3 Law and ethics

However, human dignity itself is not a law but it is a value, a perspective, and so it is part of ethics. Has human dignity then to be understood as 'vorstatlich', a 'Normprinzip', a no-discussable principle with an absolute status? Or is it just a principle like other principles? When it is just a principle as other principles it can be overruled by these other principles (like autonomy, liberty, safety).[49] It should be clear by now that in Catholic teaching it is a non-negotiable principle.

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45 *CSD* no. 153.

46 *CSD* no. 155.

47 *CSD* no. 403.

48 Human Rights in Catholic Thought, <http://www.bc.edu//bc_org/rvp/pubaf//05/Hollenbach_America.html>.

49 This explains the juridical discussion on human dignity in countries like Germany. Cf. Fischer, J. *Zur Relativierung der Menschenwürde in der juristische Debatte,* http://www.menschenrechte.uzh.ch/publikationen/RelativierungderMenschenrechte.pdf .

Human rights are laws based on and emanate from human dignity. Law and ethics are always intertwined; they are related, but they are not identical. Law provides in more or less concrete rules and norms to achieve and guarantee a peaceful life in and by a community, ethics provides especially in values the realization of a good life. Law regulates and limits, ethics stimulates and motivates. In ethics the individual conscience is leading, in law acceptance and sanctions. Law is interested in human behavior/action and its consequences, ethics is more interested in reasons and motives of human action. Law looks for facts and results, ethics at worthwhile desirabilities.[50]

The Swiss jurist Mastronardi has reflected on the relationship between religion, ethics and law.[51] He says that human dignity is not an obvious theme in law, for the value man has or gets depends on ethical and religious criteria. Law is in Mastronardi's view just an instrument to protect the ethical and religious concept of humanity. Human dignity used in a legal/juridical context can be just a part expression of the more complex concept and idea of human dignity. For the religious and ethical concept 'human dignity' is too vague and has to be translated in juridical and concrete responsibilities and duties. That is the reason that human dignity is fragmented and is split up in different human rights laws. The result is that the total concept of human dignity is lost in law. Law cannot completely include and comprehend the concept of human dignity, for in the law-making process from religion into ethics and from ethics into law the concept of human dignity changes: human dignity as love and grace becomes justice, and ends finally in a particular subjective right of protection, but this right of protection is not the same as justice, and justice is not the same as love.

4. Human dignity and prison chaplaincy

After showing that human dignity is a theological imperative and a legal obligation we focus in this paragraph on what the consequences are for prison chaplaincy. Firstly, we see the main results of a survey on human dignity and prison chaplaincy in the Netherlands is presented (4.1), after which the consequences for the chaplaincy's position are described (4.2) and some guidelines to stimulate and protect human dignity of prisoners in daily work are proposed (4.3).

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[50] Cf. Witte, J. & Alexander F. (Eds) (2008). *Christianity and Law. An Introduction.* Cambridge: Cambridge University Press.

[51] Mastronardi, Ph. (2004). Verrechtlichung der Menschenwürde – Transformationen zwischen Religion, Ethik und Recht. In K. Seelmann, *Menschenwürde als Rechtsbegriff*. Wiesbaden: F. Steiner Verlag, pp. 93-115.

4.1 Survey results

A part of my PhD-research on the subject of human dignity as task of the prison chaplain there was a survey involving all Dutch RC prison chaplains.[52] But before I go into depth let me give some basic information to give a better understanding of the survey's results in the context of the Dutch prison chaplaincy.

The Dutch government sees prison chaplaincy as a result of the recognition of the human right regarding freedom of religion. This right implicates that every detainee has the right to receive spiritual care of his or her choice. Security measurements make it impossible for prisoners to receive regular spiritual care so special arrangements have been made to make it possible to consume this right during detention. Every 5 years there is a representative survey for detainees to see what kind of spiritual care is required by them. Dutch society is multireligious which results in the necessity of several main denominations which are recognized by the government to give spiritual care to detainees: there are catholic, protestant, Muslim, Hindu, Buddhist, Jewish and humanist spiritual caregivers. However, because of the segregation between State and Church the government only facilitates spiritual care, which means in practice that the government pays the prison chaplains (who are by law civil servants) and that the several denominations are responsible for the spiritual care itself.

In the survey I wanted to explore what the experiences of the prison chaplains were on the subject of human dignity in their prison. The survey guaranteed anonymity but the respondents could volunteer to be part of a follow up to deepen the survey results by participating in focus groups. In total 30 prison chaplains (53%) returned the survey and 10 of these respondents took actually part in two focus group discussions, each consisting of 5 chaplains. The most important result is presented below.

All respondents saw taking care of human dignity in prison as part of their pastoral task; it is considered as being an essential part of their vocational and professional integrity. The doubt arises when asked whether they are alert and qualified enough in regard to human dignity issues in prison, 60% of the respondents doubt this. This doubt increases even when the respondents are asked whether they can question or openly discuss human dignity issues in their prison: 75% of the respondents experience this as a difficult and problematic task, and two third of the respondents answered that human dignity issues in their prison created conscience conflicts with the chaplains. The areas of conscience conflict

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[52] Eijk, R. van (2013). *Menselijke waardigheid tijdens detentie. Een onderzoek naar de taak van de justitiepastor.* Wolf Legal Publishers: Oisterwijk, Ch. 6, pp. 215-275.

are about the loyalty between institution/staff and prisoners and as most important the loyalty to confidentiality and the duty of care.

It can be problematic to maintain a balance between confidentiality and loyalty, as the chaplain has a duty of care of the prisoner whilst maintaining loyalty to the prison administration. The chaplains saw

a. the fact that human dignity is a sensible issue in the prison organisation: raising the issue is easily understood as disloyal criticism to the institution, and there is resistance in the prison organisation to accept criticism;
b. prison chaplains experience their own position in the prison organisation as vulnerable as in their functioning they are dependent on the prison staff, by raising human dignity issues and criticising the prison institution on this field the chaplains fear repercussions;
c. the reliability and validity of the information concerning human dignity issues are unsure,
d. and not every prison chaplain has the personality to confront difficult issues easily.

The respondents who said they did not experience difficulties to raise human dignity issues in their prison find support in general principles which transcend a concrete situation or incident.

The survey shows that for the respondents human dignity means respecting the individual detainee. In detention circumstances this respect is especially expressed by

1. not humiliating and not ignoring the detainee and his or her physical/mental need;
2. respecting his/her integrity;
3. making no distinction in relation to the kind of offense committed by the detainee;
4. taking into account the detainee's physical and mental background;
5. focusing on possibilities for change and a future perspective for the detainees.

Asked for concrete cases in which human dignity of detainees was under siege all these cases could be reduced to two major categories:

1- treatment by prison staff displayed in 1a- undesirable behavior like humiliation, bullying, ignoring, and 1b- unprofessional behavior like violating confidentiality, lack of responsibility, failure to fulfil commitments;
2- rigidity in application of rules or sanctions which results in injustice.

The reaction by prison chaplains to these cases differed. The most important reaction was the informal consultation of colleagues or prison staff concerning the case, giving support to the detainee by listening and comforting, by offering mediation or by motivating the detainee to make an official complaint, in some cases the prison chaplain informed third

parties like the family or the lawyer of the involved detainee.

The survey showed that the prison chaplain is not an obvious partner for prison staff when human dignity issues are involved. Prison chaplains reported as most important expectations uttered by detainees: offering comfort, giving moral support and advise.

Though the prison chaplains stated that their own position in general was not important or threatened one can see in their answers that they are very focused on facts and are looking for certainty which makes their way of handling human dignity issues prudent and measured: they want to be sure about a case before acting. In handling human dignity they prefer informal ways instead of formal, official procedures. In general the prison chaplains doubt seriously whether there is enough attention paid to human dignity in prison, as security and control mechanisms prevail.

One cannot conclude that there are structural human dignity problems or even atrocities reported by the Dutch prison chaplains, though the survey makes clear that even in prisons in a country with a relatively good status regarding human rights, and with well-functioning structures and institutions there are serious threats regarding human dignity. Prison chaplains are in a rather isolated position in the prison system, at least they experience the situation often as a vulnerable lone ranger.

4.2 Consequences for prison chaplain's position

What do these results mean for the prison chaplain when we agree that human dignity is a theological imperative and that there is a legal frame work of prisoners' rights? For it is unavoidable that all this has consequences for the chaplain's work in prison.

The prison chaplain's central task and duty is to give pastoral, spiritual care to inmates. It has its biblical foundation in the Works of Mercy (Mt. 25,36, Lk. 4,18 and Jes. 42,7; 49,9 and 61,1). The first aspect is visiting the inmates which means that no inmate is an outcast, no matter what his crime was. Visiting prisoners means that one keeps the relationship, the connection with the prisoner open; prison walls, bars and closed doors are not the end of being part of humanity. But the Biblical text goes even further for Jesus says that He Himself was imprisoned and was visited. So Jesus identifies Himself with those who are imprisoned, an identification which is dramatically realised when Jesus is sentenced and crucified as a common criminal. (Mc. 10, 37; cf. Mt. 20, 21 and Mc. 15, 27; cf. Mt. 27, 38; Lk. 23, 33). The second aspect in the text which is of importance for our pastoral spiritual care is the aspect of liberating the prisoners. Liberating means in this text not opening the prison doors, it means freeing from evil by trying to find a restorative perspective, working on a change for a good life, for inmates

are not condemned to stay criminals, they are even potential saints.[53]

I think all will agree that pastoral spiritual care for detainees is the central key task for a prison chaplain. Of course one can identify many different activities and models in pastoral care, but pastoral care is about care in the light of the Gospel, which includes -as we saw above- caring for and about the detainee's human dignity and his human rights, for the detainee is created to the image of God. So our pastoral care includes responsibility for protecting the human dignity of every detainee, regardless of his religious, ethnic or sexual background, like the Good Samaritan showed (Lk 10:29-37). Even when we cannot do a great deal in concrete terms about the reality of detention our testimony that every detainee has to be respected in his dignity and rights is important. That testimony has an impact and meaning, even if it is just by visiting them because visiting them is an important gesture and meaningful signal.[54] However, this implies that our pastoral care can't be neutral. Prison pastoral care cannot (endlessly and only) be restricted to prayer and spiritual services; it also has its roots in a prophetic, yes even a political ministry. Pastoral care is not available without values, or principles and it is not free of context.[55] The prison chaplain has to comfort but also to challenge detainees and prison staff if necessary. Pastoral care is about comfort as well as empowerment.[56] In the end this means that tensions and conflicts are unavoidable. A prison chaplain who does not experience these tensions and conflicts should ask himself whether he is doing his work properly.

Even a prison has what the British criminologist Liebling calls a 'moral performance'.[57] But the task of a prison chaplain is not identical to the task of the prison staff. It is not the chaplain's first job to help decrease crime, to punish or correct the detainee; it is his first vocation to keep his and the detainees lives in line with God's Gospel. So when a prison chaplain only

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53 Borgman, E. (2012). Een bevrijdende God in de gevangenis? Theologische reflecties op justitiepastoraat. In Th. De Wit, R. de Vries & R. van Eijk (Red.), *'Graag een normaal gesprek'. Geestelijk verzorgers aan het werk met gedetineerden*. Tilburg: Wolf Legal Publishers, pp. 11-23, p. 17.

54 Ginters, R. (1976). *Die Ausdruckshandlung. Eine Untersuchung ihrer sittlichen Bedeutung*. Düsseldorf: Patmos.

55 Rassow, P. (1983). Der Gefängnisseelsorger in der Sicht der Vollzugsbediensteten. Erfahrungen und Erwartungen. In J. Spoor (red*.), De kerk in de gevangenis*. Kampen: Kok, pp. 152-161; Pattison, S. (1988). *A Critique of Pastoral Care*. London: SCM Press and Pattison, S. (1994). *Pastoral Care and Liberation Theology*. Cambridge: Cambridge University Press; A. Dillen, A. & Vandenhoeck, A. (2009). Profetisch handelen: een onmogelijke roeping? In A. Dillen & A. Vandenhoeck (red.). *De moed om te spreken en te handelen. Profetisch pastoraat*. Antwerpen: Halewijn, pp. 5-14.

56 Bruinsma-de Beer, J. (2006). *Pastor in perspectief. Een praktisch-theologisch onderzoek naar de competentie van de pastor*. Gorinchem: Narratio.

57 Cf. Liebling, A. (2005). *Prisons and Their Moral Performance. A Study of Values, Quality, and Prison Life*. Oxford: Oxford University Press.

adapts to the situation and does not speak out on human dignity violations he loses his identity, his credibility and betrays his vocation.

The prison chaplain is like a frontier worker who travels continuously between two different 'worlds'. This is a complex position for to be able to function as prison chaplain one needs the trust of both sides, of the inmates and of the prison staff/authorities. Prison chaplains know that their position in prison is a special and difficult one: he is or should be a person of trust for the inmates, a spiritual leader. At the same time, he is in a certain way also part of the prison system and its staff. His position is one of double-binding, with loyalties to the inmates and at the same time certain loyalties to the personnel and this in a detention context which is in most cases an environment of mutual distrust and power game between prison staff and inmates. However, a prison chaplain serves firstly his community of inmates and secondly the government. Church and government are not equal, and they are certainly not identical in their approach to inmates. The perspective of a chaplain is not the perspective of a civil servant, police officer or military: the focus on security and safety is not the same as the focus on sanctification.

As said, this leads to a prison chaplain moving permanently between:

- government politics and religious convictions;
- government law and ethics;
- state's frontiers and God's creation;
- loyal citizen's obedience and witnessing Christian protest and
- following government policy and leading a religious community.

One of the major results in my research was that it is difficult for many prison chaplains to keep in line with the critical and prophetic aspect of the prison chaplaincy -even in the Netherlands, a country with a long democratic tradition, relatively good detention facilities, well developed and trustworthy legal structures. To criticize the system one is working in is difficult: Most of the time governments and prison staff do not cheer when being criticized. Many chaplains prefer to listen to the detainees' complaints, try to comfort and support them but they don't easily speak openly out in cases where things are not right. They prefer to help in silence instead of to speak out and advocate openly. The reason is of course that there is fear of conflict and escalation, many want to avoid risks or even sanctions for the inmates and themselves. But by doing this there is the danger that the chaplain becomes invisible and betrays his vocation and task: being a witness to God's and to the dignity of man's case. This witness however is in line with the Compendium of the Social Doctrine of the R.C. Church.[58] And the British detention expert Andrew Coyle is right when he writes: "When making decisions about the treatment of human

[58] Cf. *CDS* no. 403, footnote no. 43.

beings there is a fundamental consideration; the first question which must always be asked is, 'Is what we are doing right?'."[59] For "[W]ithout an ethical context, managerial efficiency in prisons can take a path that leads ultimately to the barbarism of the concentration camp and the gulag."[60] This means that the prison chaplain can and should contribute to this ethical context in a constructive-critical way.

Justice without love is not sufficient, as is love without justice. Especially in prison context justice and love need to be intertwined. The Encyclical *Deus caritas est* describes the relationship between justice and love -which is relevant for the prison context - as follow:

> *"In order to define more accurately the relationship between the necessary commitment to justice and the ministry of charity, two fundamental situations need to be considered:*
>
> *a) The just ordering of society and the State is a central responsibility of politics. (…) Fundamental to Christianity is the distinction between what belongs to Caesar and what belongs to God (cf. Mt 22:21), in other words, the distinction between Church and State, or, as the Second Vatican Council puts it, the autonomy of the temporal sphere. (…)*
> *Justice is both the aim and the intrinsic criterion of all politics. (…) From God's standpoint, faith liberates reason from its blind spots and therefore helps it to be ever more fully itself. Faith enables reason to do its work more effectively and to see its proper object more clearly. This is where Catholic social doctrine has its place: it has no intention of giving the Church power over the State. Even less is it an attempt to impose on those who do not share the faith ways of thinking and modes of conduct proper to faith. Its aim is simply to help purify reason and to contribute, here and now, to the acknowledgment and attainment of what is just. (…)*
> *b) Love—caritas—will always prove necessary, even in the most just society. There is no ordering of the State so just that it can eliminate the need for a service of love. Whoever wants to eliminate love is preparing to eliminate man as such. (…) In the end, the claim that just social structures would make works of charity superfluous masks a materialist conception of man: the mistaken notion that man can live "by bread alone" (Mt 4:4; cf. Dt 8:3)—a conviction that demeans man and ultimately disregards all that is specifically human."*[61]

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[59] Coyle, A. (2002). *A Human Rights Approach to Prison Management. Handbook for Prison Staff*. London: International Centre for Prison Studies, p. 13.

[60] *Ibid*., p. 6.

[61] Encyclical *Deus caritas est*, Pope Benedict XVI (25 December, 2005), no. 28.

The only conclusion is that this implies an unavoidable and insoluble tension to the prison chaplain's position. It means that the chaplain is bound by justice and love (mercy) as well, not just by one of them. To avoid or ignore this tension is impossible without betraying the chaplain's task and vocation, which means betraying God and the inmate as fellow man. This tension is especially useful and necessary to contribute to and stimulate the (endless) discourse on humane detention.

4.3 What can be done on human dignity in daily work?

Firstly, we should be aware in general of the threats of human dignity in detention. There are some major threats which should be mentioned here:

1- Non-Documentation (inmates have to be traceable!) and non-transparency (which results in arbitrary and unfair decisions);
2- inhuman treatment (bullying, plaguing, ignoring, detracting, rigidity concerning application of rules, harsh sanctions);
3- inadequate living conditions (Food, overcrowding, health circumstances);
4- inadequate facilities (medical/spiritual care, activities like work, education, sports) and
5- lack of rehabilitation possibilities (family contact etc.)

Secondly, we should be aware that there are many ways for a prison chaplain and many things which can contribute to help detainees and prison personnel in realizing a humane detention climate. We know them all: praying, preaching, comforting, supporting, advocating, political lobbying, documenting, writing, informing, monitoring.

What is the right thing to do?, Coyle asked. Of course answering this question depends on the person of the prison chaplain and the circumstances. The ICCPPC guide for chaplains confronted with torture states: "It is clear that there is no simple answer which applies under all circumstances. Always, common sense is required to find an appropriate response. It depends on many factual circumstances: are the acts committed by some few officers or are they accepted as part of the whole system? How strong is the position of the church and of prison chaplains in the context of the national structures? Is there a functioning national system to report on and prevent?"[62]

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[62] Int. Commission of Cath. Prison Pastoral Care. (2010). *A Guide for Chaplains Confronted with Torture*. p. 4.
The same guide presents some important practical guidelines regarding torture:
• Do no harm: exercise great care and do not create unnecessary risks for those you leave behind;
• Exercise good judgment: be aware of interests and false statements;
• Respect the authorities and the staff in charge;

In the Netherlands the Council for the Administration of Criminal Justice and Protection of Juveniles[63] recently formulated some principles regarding the treatment of prisoners which maybe can be useful guidelines too:

1. The *principle of decent treatment* based on quality, professionalism, decency and ethics of prison staff which is promoted by careful, considerate, respectful treatment of all prisoners;
2. The *principle of perspective*: attention for rehabilitation, personal development and aftercare. The focus is on the prisoner's future and minimization of damage caused by detention circumstances;
3. The *principle of legal and legitimate execution of sentences* to avoid arbitrary decisions;
4. The *principle of useful regime* (useful daily activities in view of structure, development, rehabilitation);
5. The *principle of safety*: prison should be a safe place for all prisoners and prison staff;
6. The *individualization principle*: suum suique ("to each his own" or "may all get their due");
7. The *principle of minimal limitations and restrictions* during detention;
8. The *principle of legal citizenship* which means that the prisoner stays a member of society with the duties and rights according to that citizenship.

• Inform the pastoral prison care coordinator of the problems and follow the agreed way of proceeding;

• Be clear about the limitations of your work and do not make promises that are unable to keep;

• Do not represent a person without an informed consent of the person. Informed consent means fully understanding the benefits as well as the possible risks or negative consequences of any action taken.

• Make it impossible for the authorities to identify the source of information.

• Share information: bring along other persons, a doctor or even a trusted official authority to corroborate the facts of the case.

• Register information as detailed and complete as possible in notebooks, complaint forms, photographs, video's etc. WHO did WHAT to WHOM WHEN, WHERE, WHY and HOW?

63 The official website announces: "The Council for the Administration of Criminal Justice and Protection of Juveniles is an independent body established by law. (…) The Council gives advice, in the form of recommendations, to the Minister and the State Secretary of Security and Justice and the State Secretary for Health, Welfare and Sport. Recommendations concern issues in the areas of the prison system, the forensic care system and youth protection. The Council gives this advice on its own initiative as well as on request." (https://www.rsj.nl/english/, 28 November 2015)

5. Final remarks

We can conclude that human dignity is a concept of value -for Christians an absolute one- which describes a transcendent reality as well as a desirability of an earthly reality. This means that human dignity is core business for every prison chaplain and in every prison. Human dignity is not a static concept but a never ending and dynamic (interpersonal and intrapersonal) process in which human dignity has to be recognized and realized, every day again. Pope Francis puts this even in greater perspective than prison:

> *"... since every life is sacred, every human person is endowed with an inalienable dignity, and society can only benefit from the rehabilitation of those convicted of crimes. (...) I also offer encouragement to all those who are convinced that a just and necessary punishment must never exclude the dimension of hope and the goal of rehabilitation."*[64]

Coyle asked 'What is right to do?' But Birch is right when he says that for a Christian it is not enough to ask 'What shall I do?', a Christian should also ask 'Who shall I be?'[65] The Old and New Testament show that God's caring love and mercy are mobilized by human suffering (Ex 3,17.). And no one can say that people in prison do not suffer. God has chosen to become human in Jesus, which includes becoming vulnerable. Jesus shared the suffering of prisoners: he was prosecuted, convicted, and sentenced to death as a common criminal. He was executed next to criminals. As Christians we have to remember Jesus' suffering. This *memoria passionis* makes what Jean-Baptist Metz calls 'the authority of those who suffer'. 'The authority of those who suffer' means that he who wants to be a Christian has to question his certainties, which is caused by the suffering of others.[66] The pain and suffering of others is in Metz' view a provocation with a religious dimension which calls for compassion. The remembrance of our own suffering and that of others provokes humanity and solidarity, even when those who are suffering are (may be) not innocent. Moreover, we should remember that not all crimes are sins and not all sins are crimes, but we are all sinners, those who are imprisoned as well as those who are not. Or as Pope Francis said: "There is no saint without a past and no sinner

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64 Pope Francis, Speech US Congress, 24/9/15, (http://www.news.va/en/news/pope-francis-makes-historic-address-to-us-congress).

65 Birch, B. (2015). The Moral Trajectory of the Old Testament – Creation, Exodus, Exile. In L. Juliana Claassens & B. Birch (Eds.). *Restorative Readings. The Old Testament, Ethics, and Human Dignity*. Eugene: Pickwick Publications, pp. 3-16, pp. 4-5.

66 Metz, J-B. (2007). *Memoria passionis. Ein provozierendes Gedächtnis in pluralistischer Gesellschaft.* Freiburg: Herder.

without future."[67] In this light we have to protect the human dignity of all, especially the human dignity of prisoners, remembering Pope Francis' words:

> *"Yet the history of sin can only be understood in the light of God's love and forgiveness. Sin can only be understood in this light. Were sin the only thing that mattered, we would be the most desperate of creatures. (…)*
> *We have to put mercy before judgement, and in any event God's judgement will always be in the light of his mercy (…)*
> *Wherever there are people, the Church is called to reach out to them and to bring the joy of the Gospel, and the mercy and forgiveness of God."*[68]

[67] Pope Francis, Homily St. Martha's House, Rome, 19 January 2016. http://www.lastampa.it/2016/01/19/vaticaninsider/eng/the-vatican/there-is-no-saint-without-a-past-and-no-sinner-without-a-future-bmeoGhD95H6EABnNXVLwsL/pagina.html

[68] Pope Francis, Homily at the Opening of the Year of Mercy, Rome, 8 December 2015.

Chapter 19
The Wounded Community
A Philosophical Essay on Imprisonment and the Notion of Mercy

Theo W.A. de Wit

To me, of the well-known conceptual pair 'justice' and 'mercy', the second term is the more mysterious and intriguing. This precisely because I have an understanding of the criticisms levelled against mercy from the position of justice, and often find myself in agreement with her critics.

In the discussion which follows, I aim to investigate what virtue has traditionally been assigned to the exercise of mercy, and which practices may be termed 'merciful'. In order to do this, I will proceed *via negativa*, that is, try to understand what mercy is by looking at what it is precisely not, or at any rate, should not be. I will therefore start out by attentively listening to the criticisms which are levelled against the exercise of mercy, while specifically paying attention to the Christian vocabulary which is used in this regard (I). Then I will discuss some 'pitfalls' or 'temptations' to which the exercise of mercy is particularly vulnerable. I will illustrate these pitfalls by discussing a few historical examples. I will show that these pitfalls all have the effect of not merely occupying or completely absorbing the notion, but of even making it redundant. Due to limitations on time, I will only provide a brief overview in this regard (II). Next I will attempt to describe the virtue of mercy in a positive sense (III). Throughout, I will approach the topic as a social philosopher, and will only marginally – if at all - venture onto the terrain of theology and exegesis.

1. Marginal notes of a sceptic

In our secular age[1], the very use of the term 'mercy', or expressing a demand that something be done or refrained from out of considerations of mercy, is likely to immediately polarise any audience: into a group of sceptics for which the notion raises feelings of unease or even revulsion; and into another which are aflush with nice warm feelings. Allow me to give two examples of scepticism in this regard. These examples are helpful, for they provide us with our first clues to instances where the defence of mercy may be misplaced.

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[1] In the sense of Taylor, Ch. (2007). *A Secular Age*. Cambridge, Massachusetts, and London, England: The Belknap Press of Harvard University Press.

1.1 Justice versus arbitrary decision

Some years ago, in an article entitled 'Mercy', the Dutch social scientist Margo Trappenburg admitted that her relationship with Christianity never really 'managed to get off the ground'. For, as she explained, even as a child she felt 'deeply outraged' by certain passages in the Bible. Not just the Old Testament, but precisely also the New. Passages which seemed to concern the notion of mercy. Thus, in the well-known parable of the labourers toiling in the vineyard in Matthew 20, we read that all labourers who had been hired received one denarius at the end of the day, irrespective of whichever hour they had been hired. Complaints by those workers who had put in a full day's work are breezily dismissed by the landowner. In the words of the New International Version, he replies 'Friend, I am not being unfair to you. Didn't you agree to work for a denarius? Take your pay and go. I want to give the man who was hired last the same as I gave you. Don't I have the right to do what I want with my own money? Or are you envious because I am generous?' Even as a child Trappenburg felt that here the 'elementary principles of justice' were being trampled underfoot. For the same reason, the parable of the return of the lost son in Luke 15, failed to enthuse her. For after all, the parable tells of the slaughtering of a fattened calf for the son who had squandered away his inheritance on wine, women and song, while none such honour is bestowed upon his hardworking, obedient brother.

When voicing her sense of outraged justice to adults, they merely told her that she was missing the point. 'Missing the point' on the one hand concerned the 'unfathomable ways of the Lord', and on the other, the notions of 'mercy and clemency'. These were supposed to be ethical principles which transcended those everyday principles of justice which mere common mortals adhered to. But to this day, says Trappenburg, 'she doggedly continues to identify with the workers who had put in a full day's work, and with the obedient oldest son.' [2]

Instead of presenting Trappenburg with yet another, or a more thorough exegesis of the relevant Bible texts, I propose to let her discontent stand for the time being. This, because her discontent reveals an important characteristic of the political order in which we are living and to which we pledge adherence. Since the French Revolution this specific political order has been geared towards replacing the arbitrary exercise of power and 'random' - that is, personal – actions with the exclusive *rule of law*: a rule based on common laws and not the whimsical actions of any particular person.

Within seventeenth century royal absolutism, the exercise of mercy - as *clementia* - was still a virtue, vested in the sovereign: the competence to

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[2] Trappenburg, M., 'Barmhartigheid' ('Mercy'). In *NRC-Handelsblad*, 6-02-2004.

grant clemency. Our own impulse, which we go so far as to link to our very worth as democratic citizens, is rather to associate the exercise of mercy with the looming threat of a relapse into the state of 'arbitrary' decisions and 'paternalistic' relationships associated with a pre-democratic *ancien régime*, with unpredictability ('being at the mercy of another'), and thus with the absence of law, justice and equality. The way we see it, a God who is capable of merciful action if it so pleases Him, bears too great a resemblance to the absolute monarch who, unfettered by any higher rule of law (*legibus solutus*), has the power to impose his arbitrary decisions on his subjects. And it is from this perspective that Trappenburg looks at the parables of the vineyard owner and of the lost son.

1.2 Strictness versus mildness

My second example concerning scepticism towards the notion of mercy brings us closer to the world of criminal law, of prison and pastoral care within a penal context. In an article on the chocking Dutch (but not only Dutch) phenomenon of 'senseless violence' (violence without a cause) the philosopher Ad Verbrugge states that nowadays such offences often raise calls for imposing stricter sentences. What should we make of these calls?, he asks. He sets off by first criticising a notion defended by his colleague Edith Brugmans. In Brugmans' view, the (till recently) relatively mild, 'humane' Dutch penal system attests to a respect for humanity.[3] Verbrugge terms this an 'abstract conclusion', for may one not just as well argue that mildness or leniency in punishment precisely *fails to* do justice to the notion of respect for humanity, in as far as 'lenient sentences do not even begin to weigh up against the victim's violated dignity'?[4] And was not Hegel, that great philosopher of law, at pains to explain that punishment within the constitutional state precisely entails an expression of respect towards the criminal? For, in Hegel's view, even after he had committed a crime, the criminal continues to be regarded as a free and autonomous individual, and is not simply dismissed as an animal which is only capable of impulsive action. The criminal does not cease to be a legal person, and in Hegel's thinking, punishment constitutes an act of reconciliation between the criminal and the moral community within which he lives, but – in Hegel's jargon - had isolated himself from by having 'negated' the rights of another legal person.[5]

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[3] Brugmans, E. (2000). Rechtvaardigheid en haar grenzen ('Justice and its limits'). In G. Glas en E. Brugmans (ed.), *Rechtvaardigheid en verzoening*, Budel: Damon, pp. 13-29.

[4] Verbrugge, A. (2004). 'Zinloos' geweld. Misdaad en straf in een tijd van cultuurverlies. In id., Tijd *van onbehagen. Filosofische essays over een cultuur op drift.* Amsterdam: Sun, 2004, pp. 11-41; pp. 14-15.

[5] See Schild, W. (2004). The Contemporary Relevance of Hegel's Concept of

Brugmans' notion has more in common with Martha Nussbaum's interpretation of the notion of mercy, where Nussbaum defines the concept as the 'tendency to take a lenient position when determining punishment: a merciful or clement judge will often impose a more lenient sentence than the maximum sentence which is legally provided for'.[6] But for now, in my opinion Verbrugge still holds the strongest argument: with regard to offences such as senseless violence, mildness or leniency in sentencing certainly does not *a priori* constitute a tribute to human dignity. However, as we will later see, Verbrugge's discourse harbours an important complication.

2. The inclusion of mercy

As both examples suggest, we modern-day democratic citizens find it hard to believe that the exercise of mercy may be possibly without introducing an element of arbitrariness or a hidden agenda. And also that the exercise of mercy may be possible without relinquishing our cherished notion of the autonomous, responsible citizen. This explains why we rather prefer to put our faith in rules with general applicability, and in abstract, universalistic concepts of justice. In addition, we distrust our own exercises of merciful behaviour as well as those of others, and in my opinion not without good reason. For the exercise of mercy is vulnerable to a number of pitfalls – 'temptations' - by which the notion may not only become perverted, but may even become transformed into its very opposite. I will mention four kinds of pitfalls here. What they all have in common is that they seek to enclose or absorb the exercise of mercy within a totality, an all-enclosing system. Thus, we readily tend to 1) instrumentalise or functionalise, 2) scientify, 3) sentimentalise, or 4) annex or monopolise the notion of mercy. Allow me to briefly review each of these pitfalls in turn. Hopefully this will allow me, *via negativa,* to approach a clearer understanding of what may actually constitute a practice of mercy in the positive sense.

2.1 Making an instrument of 'mercy'

In my opinion, we may speak of an 'instrumentalisation of mercy' when churches and religious organisations are being called upon to contribute towards the cause of much-needed 'social cohesion', for example, by means of what is known as 'the works of mercy' in the Catholic tradition. But if 'the works of mercy' serve the cause of a desired social order, would that not imply that such works may just as well be replaced by other, more

Punishment. In R.B. Pippin & O. Höffe (ed.), *Hegel on Ethics and Politics.* Cambridge: Cambridge University Press, pp. 150-183.

6 Nussbaum, M., *Oplevingen van het denken. Over de menselijke emoties*. Amsterdam: Ambo, p. 313.

efficient means? Or let us turn the question around: are works of mercy still desirable if they *do not* promote (more) social cohesion? Let us look at the example of 'redemption', in the sense of visiting the imprisoned, one of the 'seven corporeal works of mercy' within the Catholic tradition. Can visiting a proverbial 'hardened' or 'habitual' criminal in prison actually be termed a meaningful contribution to social cohesion? The chances are good that anyone visiting such an unrepentant murderer or callous rapist will be met with astonishment or outrage, or even with jeering laughter. Should one really be wasting one's time on such scum? Does the exercise of mercy in such instances not rather have the effect of putting 'social cohesion' - or at least the dominant conception of this cohesion - into question in some small way? For, sociologically speaking, does the term 'social cohesion' not precisely include a set of shared convictions with regard to what and who constitute 'anti-social' elements and human scum?

Against this background one should note that – in the Christian tradition – the purpose of neighbourly love – to which the works of mercy give concrete expression - is *not* informed by the goal of social cohesion, but by the notion of the intrinsic dignity or 'honour' of another human being.[7]

2.2 Making a science out of mercy

Which brings us to the second pitfall. Globally viewed, the most influential and also most tragic example of 'making a science out of mercy' - or at any rate of a large part of what in the Catholic tradition is termed the 'corporeal works of mercy' ('feeding the hungry', 'clothing the naked', 'sheltering the homeless', 'giving drink to the thirsty') - is of course communism, or 'concretely existing socialism'. Not long after the Berlin wall came down in 1989, the Russian author Fazil Iskander penned his 'Essay on man'.[8] In this essay he tried to make some sense of the bankruptcy of socialism. How is it possible, Iskander asks, that a doctrine which was exactly founded upon the values of mercy and compassion towards universal mankind, was all the same capable of giving rise to the most unfeeling of all social systems, namely that of 'concretely existing socialism'?

In his attempt to come to grips with this paradox, Iskander sketches out two variations of an imaginary scene. At a station, a traveller is awaiting the arrival of a train. With him, he has a loaf of bread. A hungry child approaches him and asks for a piece. (In parenthesis Iskander notes that at the time of his writing – the essay was published in 1993 – this was already becoming a part of everyday reality in Russia). The traveller cuts

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7 Moyaert, P. (1998). *De mateloosheid van het Christendom (The Excessiveness of Christianity).* Nijmegen: Sun, especially pp. 42-52.

8 Iskander, F. (1993). Versuch über den Menschen. In *Lettre International*, Heft 22 (1993), pp. 18-23.

a piece off the loaf and gives it to the child. Then a second, a third and a fourth child appears. Soon the whole loaf is gone. When he is approached by yet another child, the traveller, to his sincere regret, is forced to throw his hands in the air and exclaim: 'I have no more bread left, go ask someone else!'

In the second variation, our traveller is once again a good-hearted person. The only difference is that he has 'a fatal tendency to theorize'. Also he gives a piece of bread to the first, second and third child. At this point he realizes that his loaf will not suffice. And he thinks: the matter would need to be dealt with by tackling it at its very root! – In other words, we may say, by approaching it 'structurally'. Feverishly he sets about making calculations in an attempt to find a solution to world hunger. Thus, while not exactly losing track of his original goal of helping hungry children, the focus of his passion has now completely shifted. Soon he no longer even notices the children approaching him, or when he does, chases them away: the *living* children have become a disturbance in his quest to help *theoretical* children. And convinced that his systematic approach eventually *includes* these living children, he ceases to feel compassion or shame.

With regard to the question which of these two travellers had behaved in a morally preferable way, Iskander answers unhesitatingly: the first. We may say that as far as Iskander is concerned, the Dutch proverb 'theory is grey, but the tree of life is evergreen' here applies. He now poses the further question: which of the two travellers, from a *theoretical* point of view, is the superior? Once again he answers: the first - regardless of the fact that, with regard to his intellectual capabilities, the second traveller may well be 'Marx's very equal'.

Why? The first traveller's theoretical superiority consists in having understood that 'the tragedy of existence cannot be vanquished, but at best only mitigated'. He finds consolation in the fact that he is actually distributing all the bread he has, even though he realises that at some point he will be forced to say: 'I have no more bread left, go ask someone else'. The second traveller on the other hand, despite his noble motives, says Iskander, leads us to suspect that in his very attempt to find a definitive, *inclusive* solution, he wants to absolve himself of the existential tragedy confronting him. In other words, by convincing himself that the problem of hunger will be definitively solved *tomorrow* (or in a hundred years from now), the sight of the hungry children of *today* no longer perturbs him.

Thus, in Iskander's analysis, the mistake at the heart of socialism is that it exchanged its original impulse – that of compassion – for a scientific approach; it exchanged the exercise of mercy for calculating reason.

I will here hang onto specifically one of Iskander's insights. It may well be possible to integrate practices of mercy – that is, concrete expressions of the notion of Christian neighbourly love - into a rational project of distributive justice (such as for instance a socialist system, but just as well

the welfare state), and thus to make a science of these practices, but even then not without giving support to the illusion that merciful behaviour itself may eventually be made redundant, replaced by a more effective solution. 'Shouldn't the government (or for that matter, the local council, or the United Nations) be taking care of this?' is a typical reflex response when we find ourselves confronted with inhumane conditions. Or perhaps better put: a typical reflex reaction for any citizen of the so-called welfare states of Europe, such as for instance the Netherlands, Sweden, Denmark or France.

Some or other secular 'ends well, all well' can-do ideology which assures that each and every one will *eventually* be taken care of, has now replaced the notion and exercise of mercy. However, according to Christian eschatology, not man, but God brings history to its completion. In this regard, the Christian tradition holds a so-called 'eschatological reservation' with regard to man's role in the ultimate shaping of history. In this religious perspective, mercy is conceived of as a very humble continuation of an infinitely greater mercy and generosity 'derived from elsewhere': the generosity of God.[9] What I would however *not* want to unreservedly take over from Iskander, is his plea to return to feeling and affective compassion. And with this, we have arrived at the third pitfall: the *sentimentalizing* of mercy.

2.3 Sentimentalizing mercy

The tendency to try and underpin the notion of mercy within *affective* compassion instead of a rational ideology which promises global justice, is typical of the post-communist era, of a humanity which has had its fill of 'ideology' and has yielded to relativism. After all, all human beings on the planet are able to relate to the phenomena of pain, hunger and thirst. Now isn't *this* real global exclusivity? Which mother has not experienced the wails of her hungry infant, is not able to identify with any other mother of a hungry child, irrespective of race, creed or nationality? It is certainly no coincidence that *children* are this sentimental notion of mercy's icons: for children and their needs speak a universal language.

This new notion of solidarity resides in the expression of com-passion or mercy which we owe to the *victims* of our planet, irrespective of the causes of their misery, and irrespective of the reasons which moved other people to make them into victims: ruthless authorities or the absence of a rule of law, fundamentalist terrorism or the ethnic cleansing perpetrated by warlords; but also natural disasters such as earthquakes or drought-inflicted famines.

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[9] Moyaert (1998) 40.

This new solidarity ties in well with a world which, thanks to advances in media and communication technology, has truly become *global* (daily dishing's of global suffering on TV), ties in well with the *secular* consciousness of Western societies ('this life is the only life') which all have a radical *individualism* in common ('isn't each and every collective ideology and orthodoxy in essence dangerous and fundamentalist?').

The rise of 'the feelings we share' and of compassion - celebrated by some as an emancipation, but by all accounts discovered and hyped by the media - has in the meantime also political landfall. To a politician, there is no better place to be seen than standing *next to* society's victims, or those of the world. Unless of course he or she goes even one step further and actually poses as some kind of victim him or herself.

Still my suspicion is that the true spirit of mercy needs to be differentiated from that of the feeling of pity on a number of crucial points. The feeling of pity is in the final analysis based on *identification* (I can picture myself or my own child as hungry, naked or abandoned), and thus remains related to the self. Some ethicists therefore make a critical distinction between pity and compassion: while in experiencing pity we obey our own 'being affected', compassion entails a benevolence towards all forms of alterity and is coupled to a desire to act *where appropriate*.[10]

An affectively based notion of human solidarity's refusal to take into account the always complex *context* of suffering or hunger - a refusal based on the fear of once more being confronted with ideology or with delicate political considerations - seems to suggest that this notion of mercy is vitally dependent on the existence of *mute* suffering. But a compassionate sentiment which views the world primarily in terms of *victims* and *perpetrators*, would seem to suggest that it originates in a spirit of *ressentiment* - of 'resentment' in Nietzsche's conception of the term: revengefulness. Today, more than ever before, victimhood in all its forms has become occupational in a sense, a role aimed at in some way or another settling scores with another person or group which is perceived to have wronged one in some way or another: one's partner or parents, one's local community, the legal system, immigrants, society, racists, politicians, etc.

As is clear from especially Nietzsche's unsparing analysis, also Christianity does not manage to escape from the spirit of resentment. One of the most surprising examples is that of the steady, rational builder of systems and theologian, that great medieval church father, Thomas of Aquinas. 'The blessed of heaven', Nietzsche reads in Aquinas 'are witness to the punishments of the doomed, so that their own blissful state may

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[10] Martelaere, P. de. 'Het gelaat van de ander' ('The face of the other'). In *De Groene Amsterdammer,* 2-6-1999, p. 10.

thereby gain in appeal'.[11] Their pleasure is therefore at least in part in being exempt from punishment.

Unnecessary to say, such a mentality of final reckoning, such a spirit of resentment, leads to a radical perversion of the Christian tradition of mercy.

When Kierkegaard on the other hand then rightly puts forth that a diffident or cautious notion of mercy, one which is ultimately derived from *gratitude* (of God's generosity) is called for – that is, one which is exactly the opposite of resentment – then the interpenetration of resentment and self-indulgent compassion within Christianity in itself presents a good argument against an (amongst others Christian) annexation and *monopolization* of the notion of mercy. And with this we have arrived at the fourth and final pitfall to which the notion of mercy is vulnerable.

2.4 Monopolizing mercy

With regard to this pitfall I can be brief. That the notion of mercy in principle does not lend itself to annexation, is given in the fact that values and virtues always retain a certain *transcendental* reserve: nothing and nobody seamlessly coincide with them, and precisely this establishes the condition which enables us to continue our critical discussions with regard to practices which purport to *represent* these values. In this context 'transcendent' also implies: such values not only compose, *bind together* a society, but also hold the potential to *decompose*, disband it.

In as far as the notion of mercy is also capable of *de*composing any specific instance of community or social cohesion, it holds a disruptive, shocking power. Perhaps the reason why Jesus of Nazareth to this day continues to fascinate Christians and non-Christians alike, is because of the *shocking* power of his deeds of mercy. Marc Richir, a contemporary French thinker whom one cannot suspect of being an apologist for Christianity, expresses it as follows. 'A man, born of a woman, but of whom the father's identity is not known, the very incarnation of beneficence in our midst we are told, someone who shows us what is most human about us, by the conspiring powers of his time is made to die on the cross as one of the worst outcasts or criminals, and his corpse, which was piously laid to rest, disappears (...) The power of love in him was so great that he appeared *terrifying, subversive, divine*, in other words, transcendent, and this transcendence continued to dwell as a an galvanizing force within the community which recognised him as a source of life.'[12]

It is thus that in the writings of this community the call is raised: 'Be merciful, just as your Father is merciful' (Luke 6: 36). This injunction gives

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[11] Nietzsche, F. (1980). *Sämtliche Werke. Kritische Studienausgabe*, Band 5: *Zur Genealogie der Moral,* Hrsg. G. Colli & M. Montinari.

[12] Richir, M. (1991). *Du sublime en politique*. Paris, p. 89. (my italics)

food for thought to anyone with good intentions towards his or her fellow human beings, but wants nothing to do with the Christian tradition: only once someone has been infinitely merciful towards us – that is, by means of a radical, non-economical *asymmetrical inclusion* – do we as human beings perhaps truly become capable of mercy. This at any rate, as we may remember, was the gist of Kierkegaard's intuition.

3. Mercy as long-suffering answer to 'deep' imprisonment

The positive outcome of my deliberations this far can be shortly summarized as follows. Mercy seems to be primarily directed at the dignity of the separate, individual human being, presenting an answer to the experience of a tragic lack, and representing a fruit of gratitude, that is, it is a response to a prior affirmation by someone else.

In searching for a more succinct and challenging concept of mercy and an existential context within which mercy would appear as the only correct ethical attitude, my hunch is that our quest may benefit from a closer look at some of the Belgian philosopher Paul Moyaert's reflections.[13] His considerations link up with my own conclusions this far. Thus also Moyaert detaches mercy from any mildness or leniency shown by a judge, and from a community-promoting sense of compassion or generosity. In order to bring the notion of mercy into sharper focus, Moyaert invites us to take a closer look at the earlier mentioned works of mercy within the Catholic tradition, and especially to treat a few of these works as keys which may unlock the meaning of them all.

In the Catholic tradition a distinction is made between the seven corporeal and the seven spiritual works of mercy, thus fourteen in total. The seven corporeal works are: feeding the hungry, giving drink to the thirsty, clothing the naked, giving shelter to the homeless, visiting the sick, visiting those in prison, burying the dead. The seven spiritual works are: rebuking sinners, instructing the ignorant, counselling the doubtful, comforting the sorrowful, bearing wrongs patiently, forgiving injuries, and praying for the living and the dead.

Well now, according to Moyaert, especially the injunctions to bury the dead and patiently bear wrongs are able to shed light on some essential aspects of the Christian notion of mercy. Thus, burying the dead should by its very nature not be understood as a way of rendering spiritual or material assistance or charity to the person in question, but as an officious deed in *honour* of the deceased. The purpose here is to confirm the deceased

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[13] Apart from his earlier mentioned work, *De mateloosheid van het christendom,* also see Moyaert, P. (2007). Barmhartigheid: transcendentie verdragen ('Mercy: enduring transcendence'). In *Tijdschrift voor Filosofie* 69/2007, pp. 713-732. See also the beautiful essay of Dinev, D. (2010). *Barmherzigkeit*. Salzburg: Residenz Verlag.

person's unique place within the universe, exactly at that moment where the tangible differences between man, animal and matter start to fade.[14]

But also clothing the naked and feeding the hungry, at a first glance mere instances of rendering assistance or attending to matters of social justice, should ultimately be seen as concerning matters of honour and dignity. Thus we speak of the preservation or the loss of human dignity, and of the humiliations – hunger, nakedness - from which we want to protect other human beings.

3.1 The limits of ethical reciprocity

If at all possible, of even greater importance to Moyaert's interpretation of the notion of mercy, is the injunction to patiently bear wrongs, to bear even the unbearable. Mercy is the appropriate attitude when we are confronted with the experience of the limits to normal, common interactions and relations based on the customary reciprocal exchanges between morally responsible human beings, in other words, of the limits to ethics and ethical accountability. At this point we cease to demand of the other that he or she behaves in a morally accountable way. We even realise that our very demand may constitute an act of cruelty where those who cannot help themselves from behaving in a morally reprehensible way are concerned. In this context Moyaert quotes Christ's plea in Luke 23: 34: 'Father, forgive them, for they do not know what they are doing'. Mercy then becomes enduring the other in his or her blunt insensitivity with regard to everyday transactions of meaning. Here Kierkegaard speaks of 'fear' or diffidence, of maintaining a proper distance in one's long-sufferingness towards such a human being who can only be called a person in the metaphysical sense, and hardly if at all in the moral sense.

In his reflections on his work as pastoral caregiver in prison, Walter Burgering in his book *Naar binnen kijken* (*Gazing inwards*) provides numerous examples of inmates who are at the very outer limits of moral accountability. Thus he notes of a certain paedophile inmate with whom he had had a few hundred conversations that this man 'tried to manipulate everything he came into contact with, including the pastor who was counselling him'. And he adds: 'By the way, he was not even conscious of his manipulating behaviour. (...) to him it had become second nature.'[15]

Here the morally accountable other has nearly perished, and all that remains is the lasting sanctity of the person. A bit further on Burgering names the two dimensions constituting a person: 'Facing the pastor is a man, created in God's own image. In his deeds and actions this human being has the freedom of choice'. Also Moyaert is reluctant to 'sever' the tie

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[14] Moyaert (2007), pp. 717-720.

[15] Burgering, W. (no date). *Naar binnen kijkend. Reflecties vanuit het justitiepastoraat*, Vlaardingen: Fort Media Uitgeverij, p. 47.

between these two dimensions, but reserves the patience of the merciful for moments in which we are faced with morally hopeless situations, with what we may term 'deep' imprisonment, namely imprisonment within evil. [16]

Moyaert also interprets other works of mercy from this perspective, namely that in essence they constitute an answer to the *limits or* limitations of ethics. Thus the counselling of the doubtful only constitutes a work of mercy when one is approached for counsel by someone 'who is imprisoned within doubt', who cannot help but doubt. And comforting the sorrowful only constitutes a work of mercy when someone who has grown insensitive to comforting words and gestures, as yet approaches one for comfort.[17]

3.2 The wounded community

Having arrived at this central point, I can now return to our earlier discussion with regard to the merits and demerits of imposing 'stricter sentences' in the cases of specific offences such as those concerning acts of 'senseless violence'. As we may recall, the philosopher Ad Verbrugge in the first instance defends the idea that in the current situation the imposing of stricter sentences would attest to the appropriate respect for both victim and perpetrator. Here he appeals to Hegel's notion of the constitutional state: whoever affirms this constitutional community, must also affirm the notion of punishment, for through punishment the criminal is reconciled with the community from which he or she has isolated him or herself. Yet this is not the crux of Verbrugge's argument. Verbrugge takes his cue from Hegel's notion that reality can only be understood once one understands it as a *totality*. According to Hegel's central dictum, *das Wahre ist das Ganze* ('Truth is the whole'). A *concrete* philosophical analysis would thus entail an analysis which shows that the deeds of senseless violence (or for that matter, any other offences) are interwoven with our constitutional state, and subsequently our society, in their entirety, interwoven with our culture and the way of life it embodies. A critical appraisal of acts of senseless violence is therefore only relevant when these acts are not viewed a-contextually, not merely as the pathological acts of deviant individuals, but instead as the very expression of the violence of our specific society. [18]

In Verbrugge's subsequent cultural diagnosis it is apparent that he seriously doubts that the 'relatively healthy community' (in Verbrugge's words) which the Hegelian model presupposes, in a country like the

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16 See for example Vos, J., Balder, C., Hemert, B. van & Wagenaar, H. (2013). *Onmogelijke levens, botsende logica's en eigenzinnige professionals. Organisatorische uitdagingen bij de aanpak van veelplegers*. Den Haag: Platvorm 31, about 'non-stop-criminals'.

17 Moyaert (2007) p. 727.

18 Verbrugge (2004) 21.

Netherlands actually still exists, and consequently, that punishment may still be understood with reference to this model. Our dominant way of life is after all no longer an ethos of justice as is described by Aristotle, nor is it characterized by the sense of community Hegel presupposes. Rather, our way of life is centred around the freedom of the individual and his or her right to the maximal satisfaction of his or her needs and desires - with the legally sanctioned freedom of other individuals to do the same constituting the only limitation. The result of absolutizing this principle of formal individual freedom (of choice) and the rather thin morality in which it is cloaked, reveals itself in what Verbrugge terms 'the loss of culture'. The constitutional state now only functions as one of the players within the sphere of social intercourse, society and her symbols are treated as secondary, even outdated, things, and culture becomes a matter of personal choice within a context where many (sub)cultures are on offer. To a community which is populated by individuals who have only a purely instrumental relationship towards the (constitutional) community, and to whom 'solipsistic sensation' constitutes the highest good, phenomena such as acts of meaningless violence are no *Fremdkörper*, no 'foreign objects'. On the contrary, in a way such acts intimately belong to a society which has adopted a way of life which endorses the ideal of the extreme satisfaction of desires ('go wild', 'take it to the limit') for its youth – an ideal which, for its youthful associations, is even cherished by adults for as long as they are capable of doing so.

Of importance in our quest for a contemporary meaning of the notion of mercy, Verbrugge in so many words concedes that his critical diagnosis of culture puts his earlier thesis concerning stricter sentences as appropriate answer to the phenomenon of senseless violence, on infirm terrain. In his view, within the context of a fragmented community, calls for stricter sentences are in effect calls for a 'scapegoat', and as such, in themselves manifestations of senseless, unreasonable violence. The following passage from Verbrugge brings us back to the problem raised by Moyaert, namely that concerning the limits of ethical behaviour and moral accountability. 'When someone (...) grows up in an environment in which something like "community" has lost all meaning, where he perhaps has lost all conception of the value of his fellow man and crime and punishment have become vague, shadowy notions of uncertain significance, *such a person, when committing a crime, in a certain sense no longer knows what he is doing*'.[19] When confronted with such a person, I would like to posit, mercy as conceived of by Moyaert would be the appropriate attitude – while of course at the same time not completely relinquishing the link with the return to moral accountability and the moral community in Hegel's sense. Perhaps the Hegelian model of the circular movement from crime,

[19] Verbrugge (2004) 29. Italics are mine.

to punishment to reconciliation which Verbrugge seems to cherish, is too reassuring, too harmonious, and as such too nineteenth century. Should we as heirs to the much older tradition of the works of mercy not perhaps rather depart from the presupposition that the notion of community is *always* shadowed by that of its fragmentation?

3.3 Never going to see the Promised Land

This realisation is at the essence of the notion of mercy. Mercy 'establishes no community and does not heal the wounds suffered by any community', Moyaert writes towards the end of his essay. This may sound pessimistic to those who purely think in terms of healing, social cohesion and *problem solving*. The works of mercy indeed testify to an insight which Moyaert goes so far as to call 'cruel' –namely that the ethical good is finite. The exercise of mercy may be called a mild response, the patient enduring of this finiteness. The exercise of mercy can afford to be milder than ethics, for it draws its hope not from ethics alone. Both Burgering and Moyaert here refer to prayer, in itself a work of mercy according to Catholic tradition. Praying, writes Burgering, this 'longing of the soul', is in the words of the Psalmist 'to enter into the darkness, the hidden, the desert'.[20] Here the *trust* which is central to the notion of mercy reaches its climax. The notion of mercy, as given concrete expression in the works of mercy, may well be *directly* aimed at assuaging the need of the other, and of 'honouring' him or her, but it is *ultimately* aimed at something as intangible as the other's 'spiritual salvation'. One here needs to distinguish spiritual salvation from the happiness, welfare or well-being of the other. The exercise of mercy thus does not contribute to the happiness of the other, and neither does it pretend to.

But what then? Spiritual salvation concerns a goal which, in the words of Moyaert, '*cannot be realised* by man, and the content of which can *just as little* be *made explicit* by man'.[21] Put differently, mercy aims at a good which it itself *neither knows nor exercises control over*. Here we find ourselves totally disarmed. The person acting out of mercy realises that he or she is excluded from what is really at issue – like Moses who never got to see the Promised Land.

Thus I have to end as I had begun: the exercise of mercy remains a mysterious virtue. For those who may feel disappointed by this conclusion, I offer by way of consolation an anecdote concerning the German philosopher Odo Marquard. Metaphysics constitutes this 'sceptical' philosopher's field of interest. He himself once defined metaphysics as a cognitive discipline which keeps itself busy with 'problems which it never

[20] Burgering, 49-50.
[21] Moyaert (1998) 46.

resolves'[22]. He compares the metaphysicist with a hunter who likes lions, but who, every time he is asked how many lions he has shot, has to answer: not a single one. He is then consoled with the answer that, where lions are concerned, that is already quite an achievement. This is also the lot of the philosopher who keeps himself busy with a virtue such as that of mercy. I can only hope that that, after having conceded that I have not exactly managed to solve any of the problems I had raised, I may be greeted with the response: 'where a notion like mercy is at stake, that is already quite an achievement'.

[22] Marquard, O. (1986). *Apologie des Zufälligen*. Stuttgart: Reclam, p. 29.

Chapter 20
Opening the Memories: Prison Chaplaincy as Exodus Spirituality.
Peter's Liberation from the Prison as an Example (Acts 12)[1]

Bart J. Koet

History teaches us that a stay behind bars can put one's strength of mind, or spirituality, to the test. According to Scriptures Joseph and Daniel were locked up, but also Peter and Paul and many other saints. In the twentieth century we have the testimonies of Titus Brandsma and Maximiliaan Kolbe. Dietrich Bonhoeffer and Nelson Mandela have shown how faith and strength of mind can flourish in captivity.[2] But not all prisoners are saints. 'We are not here for our sweaty feet' was a common expression of the detainees in the conversations I had with them. This was during the fifteen years that, next to my job at the university as an assistant professor of the New Testament, I had a part-time job as a prison pastor.

I was asked to write this article in order to explain how an exegete and former prison pastor puts imprisonment and liberation in a biblical perspective. My starting point will be the story of Peter, described in Acts 12,1-23. In this fragment we not only learn about the actual events, but, when we listen well, we understand how Luke also gives us the biblical interpretation.

This passage is one of the many examples of the way in which the liberation story of Exodus can be actualised.[3] First I will discuss the structure, then, a text from the writings of Flavius Josephus will be introduced. This is parallel source more or less contemporary to Luke´s Acts, which may shed some light on the story. Next the biblical perspective

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1 This article is an adaption and a translation of an earlier Dutch article published as 'Een voorbeeld van bijbelse Exodus spiritualiteit: Petrus' bevrijding uit de gevangenis (Hand.12)'. In *Communio (=Communio Internationaal Katholiek Tijdschrift)* 29 (2004), pp. 410-42. I thank Nico Smit (MA) for his help in translating and adapting this article. This article is dedicated to Father Swetnam, S.J., who during my year at the Pontifical Biblical Institute (Rome) inspired me to look for the interpretation of Scripture within the New Testament. His seminar was the basis for most of my later exegetical work.

2 See e.g. Dietrich Bonhoeffer, D. (1998). *Widerstand und Ergebung. Briefe und Aufzeichnungen aus der Haft* (C. Gremmels, E. Bethge & R. Bethge (eds.), Dietrich Bonhoeffer Werke Bd 8 Gütersloher Verlagshaus: Gütersloh).

3 A fine introduction to the Exodus pattern in biblical tradition remains: David Daube, D. (1963). *The Exodus Pattern in the Bible.* Faber and Faber: London.

will be discussed and finally there follows a reflection on the way in which the Exodus pattern can be of use for example to those working in a detention centre.

1. Construction, unity and context of Acts 12.1-23

In Acts 12 we are told how King Herod has some of Jesus' followers arrested and how he subsequently has James killed with the sword. According to Acts 12,3 this pleased the Jews, so he orders Peter to be imprisoned as well.[4] In prison an angel comes to liberate Peter. Later on King Herod is punished for his blasphemy and dies a gruesome death (Acts 12,20-23).

Acts 12,1-23 constitutes a unity. It is framed by two texts about Barnabas and Saul and their journey to Judea where they handed out the support for the community (11,29-30; 12,25).[5] In 12,1 Herod is introduced as a new personage and with the mention of his death this part closes (12,23). Acts 12,1-19 is all about Peter's captivity. After the introduction of Herod and his deeds against the followers the real theme starts in 12,3: the imprisonment and liberation of Peter (12,3-19). At first sight 12,20-23

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[4] Probably it is needless to say that when Luke here and elsewhere in Acts talks about 'the Jews' we should not start from the idea that he means all Jews. It seems that by 'the Jews' he especially means those Jews in opposition; see for example my remarks in connection with Acts 13.45 in: Koet, B.J. (1989) 'Paul and Barnabas in Pisidian Antioch: A Disagreement over the Interpretation of the Scriptures (Acts 13.42-52)' in Koet, B.J. (1989). *Five Studies on the Interpretation of Scripture in Luke-Acts* (Studiorum Novi Testamenti Auxilia 14) Peeters: Leuven, pp. 97-118, 99-106. Indeed, Luke presents Gamaliel, very much appreciated in Jewry (Judaism) in Acts 5, in a special and positive role. For a differentiated attempt to understand Luke's opinions on the Jewish people, also see the Papal Bible Committee, *The Jewish People and their sacred Scripture in the Christian Bible,* for the English version *http://www.vatican.va/roman_curia/congregations/cfaith/pcb_documents/rc_con_cfaith_doc_20020212_populo-ebraico_en.html*

[5] The repetition of the Greek word *diakonia* (11,29 and 12,25) also functions as a kind of frame of this story. *Diakonia* here does not refer to a sort of 'low service' or 'assistance', but it indicates a 'delegation' or 'mission' which Paul and Barnabas receive from the elders. For a thorough assessment of the misconceptions around diakonia as referring to 'low service', see Annie Hentschel, A. (2007). *Diakonia im Neuen Testament: Studien zur Semantik unter besonderer Berücksichtigung der Rolle von Frauen*, (WUNT, 2. Reihe, 226) Mohr-Siebeck: Tübingen. For her discussion of Acts 11.29 and 12.25, see pp. 346-350. For diakonia in Luke-Acts, see also my "The Image of Martha in Luke 10,38-42 and in John 11,1-12,8", (together with Wendy E.S. North). In Gilbert van Belle, *et al*., (eds.) (2008). *Miracles and Imagery in Luke and John*, (Fs Ulrich Busse, BETL, 218) Peeters: Leuven, pp. 47-66 and my "Luke 10,38-42 and Acts 6,1-7: A Lucan Diptych on Diakonia", in J. Corley & V. Skemp, (eds), (2008). *Studies on the Greek Bible*, (Fs. Francis T. Gignac, CBQMonograph Series, 44) Catholic Biblical Association of America: Washington, D.C. pp. 163-185.

does not really connect to the foregoing text. None of the main persons from Acts, such as Peter, Paul, Stephen or James are present. However, at closer examination it strikes the reader that both at Peter´s liberation and at the death of Herod, it is the Angel of the Lord who takes action. This gives the impression that these passages are related. Thus the death of Herod may be understood as a punishment for the tyrant for his arrogance and his violence against Jesus' followers James and Peter.

In Acts 12,1-2 the scenery for the next verses are being prepared. Herod is characterised as a potentate. He has people arrested and 'vexed'. For this imprisonment no clear reason is given. The story doesn't give any clues or any argument for James' death either. The way in which Luke describes his execution it looks as if Herod killed James himself. In this way the king is painted even more as a man full of arbitrariness.

It is against this background that the story about Peter is narrated. His being kept prisoner is motivated, but this motivation lacks any legitimization. For Luke tells us that this is just to propitiate the popular (when he saw that it pleased the 'Jews'; Acts 12.2) will now that Peter is also imprisoned. Of course this is the reason that - as in the later show trials of Stalin - the prisoner should also be 'shown' to the people. Since it is Easter the show ought to be postponed (12.3-4). By the way, the way in which Peter is guarded also becomes more show than reality: four times four men guard him (12.4). That truly is not needed.

In the next scene (12.5-11) the story of Peter's liberation is told. The *ecclesia*, the group of disciples, prays for Peter. According to the word in Luke 18,1 they are not discouraged. Even so whereas in 12.6 it is described that Peter is still being guarded very strongly indeed: he has been chained up to two soldiers.[6]

The disciples' prayer is answered. The miracle of the liberation is described in various ways. Like elsewhere in Luke-Acts the divine turn in Acts 12.7 is announced by 'and behold'.[7] In more modern translations it is often left out, maybe because it is considered archaic or because, contrary

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[6] Just like in our days there was a score of possibilities for a prisoner in the Roman Empire. Often imprisonment was a preparation to death penalty. One could also be thrown into a deep cellar and rot away and become filthy. There were also milder forms. Ulpianus, a lawyer from the second century, mentions these possibilities: being locked up in prison, being handed over to the army and it was even possible to be released on bail. During his lifetime Paul is submitted to several forms. Even during his last long custody he underwent different forms of detention. See Rapske, B. (1994). *Paul in Roman Custody* (The Book of Acts in its First Century Setting III) Eerdmans: Grand Rapids, Michigan and Cassidy, R.J. (2001). *Paul in Chains. Roman Imprisonment and the Letters of St. Paul.* Crossroads: New York.

[7] 'Behold' or 'and behold'; over fifty times in the Gospel and about twenty times in the first part of Acts, its more Biblically coloured part; compare for example the beginning of the Emmaus-story, 24.13.

to people at the time of the coming about of the NT, a repetition is found to be disturbing. In this way we lose a biblical sign: Reader, watch out, something important is about to happen. Yet one could imagine that in an even more modern translation or while reading out during a liturgical congregation such a signal word might very well be used in one form or another.

The Angel of the Lord came upon him and a light shone inside the prison. Peter is touched and - like Paul before - is told: 'Arise' (see Acts 9.6)

His chains fall off and he had to gird himself, bind his 'sandals' and cast his garment about him (12,8). Peter does everything he has been told, but Luke does mention that it occurs to him as unreal. He doesn't know if what is happening is fiction or reality. To him it looks like a dream.[8] Peter follows the angel. They pass the first and the second ward. The iron gate unto the city appears open. Then the angel departed from him. Peter comes to himself and realizes that the Lord sent his angel.

But although Peter is free now, he has not yet returned into the community. When he knocks at the house of Mary, the mother of John Mark, people who are praying together there, say that it cannot possibly be Peter. They think it is an angel. After Peter has entered he tells the people 'how the Lord had brought him out of the prison (12.17)'.

When the king learns about Peter's escape, the guards are taken prisoner and Herod disappears towards Caesarea, the city founded by his notorious grandfather.

Amidst life is death. Because 12.20 narrates how the king prepares for warfare against the citizens of Tyre and Sidon. When things have not yet been settled, a large festival takes place. The people see Herod in a splendid apparel and call unto him that he is the voice of God. Because of the blasphemy the Angel of the Lord smites him and Herod dies a terrible death.

2. A parallel in the writings of Josephus

Luke's story receives historical depth, because parts of it can also be found in a different more or less contemporary historical source viz. in the writings of the Jewish historian Flavius Josephus. This historian was born in 37 C.E. He probably died around the turn of the century. He played a major but somewhat peculiar role in the Jewish war. At first he fought against the Romans, but after his surrender to Vespasian, the prisoner of war Josephus claimed to have seen in a dream that this man would become

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[8] Luke knows that dreams can also mean messages from God, see Koet, B.J. (1999). Divine Communication in Luke-Acts. In J. Verheyden (ed.), *The Unity of Luke-Acts* (BETL 142) Peeters: Leuven, pp. 745-758; reprinted as: Why does Jesus not dream? Divine Communication in Luke-Acts. In Koet, B.J. (2006). *Dreams and Scripture in Luke-Acts. Collected Essays* (CBET, 43), Peeters: Leuven, pp. 11-24.

a Roman emperor. When this actually happened Vespasian released him and as a freedman he also received the name of Vespasian's house: in future he went through life as Flavius Josephus.[9] As this emperor's historian and of his son Titus, Josephus started his voluminous work. He wrote a book on the Jewish War *Bellum Judaicum* (from now on *Jewish War*). Apart from that he described the entire Jewish history in *Antiquitates Judaicae (= Jewish Antiquities).* The aim of both books was apologetical and he especially tried to show that it was truly possible to be both a Jew *and* a Roman citizen.

Together with the Alexandrian-Jewish 'philosopher' Philo, Josephus is one of our main sources which, apart from the evangelical, the intertestamentary and (to a certain extent also later) rabbinical sources may throw some light upon Israel's history of the first century. Even thanks to Josephus' works we can understand certain details from the NT.[10] Thanks to Josephus we know that the Herod mentioned in Acts 12 is Agrippa. In *Jewish Antiquities* 18.126-19.366 he laboriously narrates about the life of Agrippa I. Apart from that there is a piece on this grandson of Herod's in *Jewish War* 2.178-183 by the same author.

From the probably somewhat manipulated picture of Josephus Agrippa comes to the fore as a fascinating man with a dramatic life. Agrippa lived in the days when areas where Jews lived were dominated by the Romans. The tensions as a result of this have as we know lead to the bloody Jewish War (67-74 C.E.). This struggle lead to the fall of Jerusalem and the destruction of the Temple (70 C.E.).

Agrippa I's government lasted a short while. Just like Luke Josephus narrates about his dramatic death (*Jewish Antiquities* 19.343-350). According to Josephus he looked so radiant in his silver garment during the gathering in the theatre at Caesarea that some looked upon him as divine and venerated him accordingly. Since he did not set this right, God punished him with a terrible death.[11] As we have seen above in Acts 12,20-23 it is described how Herod (=Agrippa I) in a royal garment is considered a god. For this blasphemy he is punished right away and he dies an abominable death.

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9 For Flavius Josephus, see e.g. Mason, S. (1992). *Josephus and the New Testament,* Massachusetts, and nr. 2 of volume 2004 of *Welt und Umwelt der Bibel,* which is entirely devoted to Flavius Josephus. For the similarities between Luke's and Josephus' works, see already Krenkel, M. (1894). *Josephus und Lukas*. Leipzig: Hässel.

10 Koet, B.J. (1996). Why Did Paul Shave His Hair (18.18)? Nazirate and Temple in the Book of Acts, in: M. Poorthuis & C. Safria (eds.). *The Centrality of Jerusalem.* Kampen: Kok. pp. 128-142; reprinted in *Dreams and Scripture,* pp. 195-208.

11 For this, see especially Wesley Allen Jr., O. (1997). *The Death of Herod. The Narrative and Theological Function of Retribution in Luke-Acts* (SBLDS 158) Atlanta, Georgia: Scholars Press.

With Josephus and in later rabbinical sources we find a picture of Agrippa I as an advocate of the Jewish cause, for example of the Temple.[12] According to Josephus he is said to have made daily sacrifices and to have played a prominent role during festivities (*Jewish Antiquities* 19.328-331). His loyalty to the Law is also emphasized by Josephus since he is said to have paid for the sacrifices of a great number of Nazirites. A gesture which by the way he shares with Paul who according to Acts 21,22-26 also paid for the sacrifices of four Nazirites in order, advised by James among others, to show his loyalty to the Law in this way.[13]

Josephus doesn't tell us whether Agrippa I had anything to do with the death of James the apostle. In the writings of Flavius Josephus, we do read that - from Christian perspective - Agrippa II played a positive role at James' death, who is called Jesus' brother (*Jewish Antiquities* 20.200-203) there. It is Ananus the High priest, who has James killed. Agrippa II considers this to be unlawful and forces Ananus to resign.

Although at Flavius Josephus we do not get any explicit confirmation of all historical details of Acts 12, the themes we hit upon in Acts 12 are definitely part of Josephus' story: a very clear parallel is that both at Josephus and in Acts it is told that Agrippa I dies because he is blasphemous. Less specific and less in agreement with the details, however thematically parallel is that both authors report that in the days just before the fall of the Temple a Jewish leader tries to acquire popular favour by the death of a follower of Jesus.

3. 'It was just in the days of the unleavened bread'. Acts 12 as an Easter story

Peter is taken prisoner during the Jewish Easter. It is the festival when the Exodus from Egypt is celebrated as narrated according to the second book of the Bible: God leads his people of Israel from slavery out of Egypt. His servant Moses inspires the people and confronts pharaoh with the ten plagues. As we know the tenth plague is the most atrocious. Each firstborn among the living creatures in Egypt will die: the firstborn of Pharaoh, of the prisoner and also of the firstborn of beasts. We can find the announcement of this plague in Exod 11 (especially in 11,1. 4-6). The execution is narrated in Exod 12.29 and that very night the Israelites were permitted to leave (Exod 12.30-32). The part in between (Exod 12,1-20) has a very special function. There God speaks to Moses. Even before the Exodus takes place God asks Moses to remember that day forever. Exod 12.14 may be translated as 'This day shall be for you like a *monument* (my translation)'. It seems to me that one can hear that also in the Latin

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[12] See Schwarz, D.R. (1990). *Agrippa I: The Last King of Judea* (TSAJ 23) Tübingen: Mohr-Siebeck.

[13] See my 'Why Did Paul Shave His Hair' (18.18), pp. 133-134.

translation of the Vulgate: *Habebitis autem hunc diem in* ***monumentum***. In a splendid way a future is seen in advance as *a past*, which will be the key to a further *future*. The Exodus that is yet to start is represented from the beginning as a model for a festival to be celebrated by all generations. Here the experience of Exodus is not only represented as a moment in time, but also as an everlasting returning moment in the life of those for whom this book is sacred. It seems that with the institution of Passover God presents man with a new gene: The Exodusgene. God leads man out of slavery and if and when this is celebrated, it can happen again and again.

If we would only have had the story of Exodus, then this Exodus would have been just history. Since in the second book of Moses it becomes an instruction to celebrate the festival forever, the Exodus becomes a vision of the future.

Owing to this new ritual this single Exodus out of Egypt comes to be experienced by later generations. Exactly since in this ritual the participants are practised in the Exodus-experience they may be able to make an exodus themselves in different circumstances.

Time and again the Exodus pattern is used.[14] An example of this we find at Isaiah. The restoration of the unity of the people and the return to Jerusalem are regularly described by the prophet in words reminiscent of the Exodus out of Egypt. A fine example we find in Isaiah 43.16-19:

> *'Thus says the Lord which makes a way in the sea,*
> *and a path in the mighty waters;*
> *which brings forth the chariot and horses, the army and the power;*
> *they shall lie down together, they shall not rise,*
> *they are extinct, they are quenched as tow.*
> *.....*
> *Behold, I will even make a way in the wilderness and rivers in the desert'*.[15]

Who will not be reminded of Pharaoh's horses and horsemen, who will not think at the way through the desert of a forty-year's journey? (see also Isaiah 51.10-11)[16]

In Exodus it says that the Passover meal should be taken at dusk. This meal is still taken in the Jewish traditions. This meal as a ritual is

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[14] Daube, *The Exodus Pattern.*

[15] For this see Beuken, W.A.M. (1979). *Jesaja IIa* (POT). Nijkerk: Callenbach, pp. 181-185.

[16] For a description about the way in which the Exodus is also used in history within western political thought see Walzer, M. (1985). *Exodus and Revolution.* New York. For example, he (6) tells that Benjamin Franklin planned to take Moses and his rod and the 'drowned' Egyptian army as a symbol for the US seal. Jefferson, however, considered it better to depict the people that followed God in the cloud.

called Seder meal. The Hebrew word *seder* in fact means something like 'order, regulation'. So the Passover meal is represented as a ritual with a fixed regulation. It has become an evening and a night of wakefulness, of singing, of having a meal together, of telling and retelling in short a night when tradition is being proceeded. But the regulation is mainly a channel. Throughout the regulation the promise of liberation is revised and in this way made into a movement of thought which brought hope, also in the darkest days in Jewish history.

4. Interpretation: Peter's Exodus

I am asked to write this article because I am an exegete and have the privilege to be a University teacher on the New Testament and the writings of the Fathers and because for fifteen years I could combine this work with a job as a prison chaplain. In prison I learnt a lot, not only about life in the streets, but I also received fresh views in theology. One of the first detainees I spoke to was someone who had killed his wife, a very nice man. In my second pastoral meeting he told me that in his tradition he told dreams to his pastor. For me this was the start of conversations for years on end with various detainees and with various wisdom traditions about dreams as a way out of despair.[17] Dreams help to get a focus upon one's life. About this the Talmud says the following: Good dreams are a comfort, bad dreams are a warning. Dreams are a wondrous mixture of processing the past as an instrument for the future.[18]

This element also occurs in the passage discussed here. That there have been apostles who were taken prisoner or killed by authorities may historically be correct, certainly if even Flavius Josephus recounts it, too. However, Luke's interpretation of Peter's imprisonment is biblical. He positions this occurrence in the light of Easter.

The key to this is Peter's pronouncement in Acts 12,17. It is the climax of the whole story. Peter summarizes what happened that night and says that 'how the Lord lead him out of prison (12,17)'. From the Greek word that is used here the word 'Exodus' has been derived.

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[17] For my encounter with this inmate, see Koet, B.J. (2009). Discussing Dreams in a Prison in Amsterdam. In K. Bulkeley-Kate Adams & P.M. Davis (eds.). *Dreaming in Christianity and Islam: Culture, Conflict and Creativity.* Rutgers University: New Brunswick (New Jersey) London, pp. 226-235. For another article about pastoral dreamwork in the prison, see Koet, B.J. (2015). Some Lessons from Prison Dreams: A Personal Account. In K. Adams, B.J. Koet & B. Koning (eds). *Dreams and Spirituality. A Handbook for Ministry, Spiritual Direction and Counselling.* London: Canterbury Press, pp. 217-230.

[18] For an introduction into the dream discussions in the Talmud, see Koet, B.J. (2015). Rabbinic Dreamwork: An Introduction to the Dream Discussions in the Babylonian Talmud (Berachot 55a-57b). In *Dreams and Spirituality, pp.* 134-146.

But 12,11 also points to an Easter background. Peter calls to himself: 'Now I know of a surety that the Lord has sent his angel and has delivered me out of the hand of Herod and from all the expectation of the Jews.' The pronouncement 'delivered out of the hand' we also find in Jethro's mouth, Moses' father-in-law: 'Blessed be the Lord who has delivered you out of the hand (both in the Hebrew text and in the Septuagint, a very ancient Greek translation, it says here 'hand') of the Egyptians and out of the hand of Pharaoh' (Exod 18.10; cf. Luke 1.71.74).

In later Jewish traditions there was a tendency, when a major event is narrated in the Bible without a special indication of time, to make this event take place during the night of Passover. Thus this time pre-eminently becomes the moment when liberating acts of God took place. An example of this is the poem '*about the four nights*' from Targum Neofiti ad Exod 12,14: creation, birth and the sacrifice of Isaac and the liberation at the end of time are situated during Passover night.[19] But there is also a Jewish tradition that Haman raised the cross for Ester's uncle Mordecai during the first night of Pesach and that Hannah complains to God during Pesach.[20]

In this way Passover night became *the* night to expect liberation, also since it is remembered how this night had brought liberation before. Above we already noticed that in the Exodus story as told in the book Exodus, God says even before the Exodus took place, that this day of liberation is yet to come, 'this day shall be for you a *monument*' (Exod 12,40; my translation). According to this story God already turns it into a pattern of thought. Remembering, remembrance thus is turned into the engine of liberation. That remembrance plays a major role during Passover is worded by the evangelists in various ways.

Jesus, too, celebrated this Passover. According to certain manuscripts of Luke 22.19 he requires to com-memorate, remember even before his passion takes place: 'Do this in remembrance of me (see also 1 Cor 11.24-25)'.

And when he is hanging on the cross and dies something very special happens. Jesus' death shakes up the world. Only Matthew tells us then that the graves are being opened (Matt 27.52-53). The word then used in Greek could also indicate remembrance. One might say that when Jesus dies on Passover Eve remembrances are burst open.

Jesus' death opens up memories, it is the start of a new Exodus, a new resurrection. Just like in Exodus the remembrance is already mentioned, touched upon, settled down, even before the Exodus takes place, in this case even before the resurrection takes place.

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[19] A standard work on this matter remains the pioneering work by Le Déaut, R. (1963). *La Nuit Pascale.* (Analecta Biblica 22) Rome.

[20] For this compare 1 Sam 1 with Pseudo-Philo's, Liber Antiquitates Judaicae, pp. 50-51.

What a magnificent picture: what a medicine against oblivion and superficiality. Jesus' resurrection has predecessors and followers. His remembrance brings forth life. In Acts 12 it is Easter, too.[21]

The text of Acts 12 itself stresses that the night when Peter is liberated is the night of Passover. Peter is taken prisoner at the time of the Passover festivities, the days of unleavened bread (12.3). He will be brought forth to the people 'after Easter' (12.4). His liberation takes place 'during the same night'. We also find this expression more or less in Exodus' description of the Paschal institution (see for example Exod. 12.8, 12.42; cf. 11.4 and 12.29). The angel tells Peter to rise, to gird himself and to bind on his sandals. This is during Easter! According to Exod. 12.11 everyone who celebrates Passover, should eat standing upright, with their loins girded and their shoes on their feet. The angel also once more urges to make it happen in haste (see 12.11, also see 12.33). Haste is also mentioned in Acts 12.7.

In Acts 12 there are more elements recalling the Exodus story. In Exod. 3.7-8 it is written how God hears the suppression that is cast upon the people of Israel from the hands of the Egyptians. In LXX, the Greek translation of the Hebrew bible, we find certain words that Luke uses when writing about Herod. Just like in Exod. 3.7-8 Herod does evil (12,1).[22] Just like in Matthew 1-2 Herod the Great is looking like the Egyptian pharaoh, in this manner his grandson Agrippa gets traits of the despotic pharaoh.

It could also be that the prayer mentioned in 12,12 is a reference to the night of eating, learning and praying together during Jewish Pesach.

It may also be because of his theological view that Agrippa I is called Herod by Luke. In this way he can stress that Peter's history may be read in the light of the life of Jesus. The disciple has to appear before a king Herod just like the Master. Here we see again that Luke positions history in his own perspective. Thanks to this interpretation he can, though historically not quite correct, without violating the truth, easily name Agrippa Herod after his grandfather.

When Luke refers so often to the story of Easter, it is likely that to a great number of readers at the time Peter's liberation could be interpreted as an Easter story. It is plausible that among them there definitely were some who immediately took up those references and were able to teach

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[21] In Acts 12 we find a connection between Passover-night and the liberation from prison. It is remarkable that this connection can also be found in the version of the Exodus by the Hellenistic-Jewish author Artapanus. In his extension of the Exodus story we find that during Passover-night Moses is taken prisoner and is guarded by watchmen, but during the night the doors are opened by themselves and Moses walks out of prison. For this text and a review, see Holladay, C.R. (1983). *Fragments from Hellenistic Jewish Authors: Vol 1 Historians* (SBLTT 20; Pseudepigrapha Series 10) Atlanta: Scholars Press, pp. 189-243, here 219, 240, n. 87.

[22] Allen, *The Death of Herod,* p. 99.

those reminiscences to other people. Thus this story was also turned into a model of biblical spirituality.

We find the description of reality in the light of a faithful model of God's guidance in history again and again in Scripture. Seeing this with faithful eyes is one of the essences of spirituality. The biblical experience of the Jewish people that could find a way out of slavery led by a God-inspired prophet Moses, becomes a model of thought for later generations.[23]

5. Breaking open memory: A way out of slavery, death or of imprisonment in whatever sense

The social worker whom I worked with in prison once told me that ministers of the Church within that institution were doing an important job: we gave the detainees their story back. I often chewed on that sentence and have only gradually begun to understand it.

In the Easter gospels it says that on Jesus' resurrection the graves were opened. It seems a sinister detail, but in fact it is very fundamental to all Easter experiences. In Exodus already it says: This is a festival of remembrance. Easter is a monument: it reminds us to the past in order to get a better future.

In a sense prison pastorate is about remembering stories. Prison ministers listen to the stories of the detainees and in this way those detainees can tell their stories in total freedom. In the room of the official professional and confessional secret it may even be that those detainees tell their real story for the first time.[24]

Prison ministers therefore hear quite a lot of life stories in those intimate conversations. Those stories may in various ways be put next to the stories of other detainees, who once told the minister their story and as such may become reflectors. In private conversations, in joint conversations and in religious services the minister can, however, also listen to wisdom stories from the Bible and in a wider tradition together with detainees.

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[23] Also in Art we can find the Exodus pattern. A special example of an actualisation of that pattern is Woody Allen, *Broadway Danny Rose* (Orion Pictures Corp., 1984). That is an interpretation of the Exodus-story, adapted and attuned to the 'young urban professionals' of New York. In that movie the Exodus pattern and its use during the Jewish Passover is used as a paradigm for the life of a group of artists - all of them more or less `losers` - under the enthusiastic lead of impresario Danny Rose (Woody Allen, who compares himself in a Red Sea environment with Moses!). The story is told during a dinner and on the Fourth of July, liberation day for the USA.

[24] For a fine example of how an inmate discusses with his pastor the real background of his delict, see Koek van Egmond, W. (2015). No leaf falls from a tree unnoticed: Dreams and Stories of a condemned Murderer. In *Dreams and Spirituality,* pp. 80-87.

Together they may be inspired by Joseph's dreams in prison.[25] Peter's story is such a reflection, too. In a dream, so to speak, Peter experiences liberation from prison. His story is a variation of the Exodus from slavery of the Jewish people, but also of the exodus of Jesus' death.

In one way or another prison ministers can look for stories of liberation together with their fellow listeners. This search demands creativity and stamina. This search ought to be organised.

In Jewish tradition causing the experience that the Exodus can be experienced even today is being ritualized in the Seder meal during Jewish Passover. The entire ordering of the Seder night is organised in a way that questions are bound to be asked. Everything is different from other occasions. There is unleavened bread. There are bitter herbs on the table, there is a bone. All these objects induce to asking questions. It is the privilege of the one with - hopefully - the best future to do the main thing. The youngest child can ask the initial question. He or she sings: Why does this night differ from other nights? The night of Passover is exactly 'This very night'. And when the questions have been asked, the father of the family, or the one who assumes the role of father of the family, tells the story of the Exodus out of Egypt. He follows the words of the *Haggada*, the ancient Passover tale: 'Slaves we were under Pharaoh in Egypt'.

The bitter herbs mean the bitter misery, the unleavened bread mean the hurry in which one had to leave, the bone reminds of the paschal lamb.

But the story ought to be told in such a way that all those present feel that the exodus is still going on. Just like we live in slavery and exile all the time, thus the exodus is a possibility for our generation as well. The storyteller who should make the children go through the Exodus experience, tells the tale in such a manner as if he himself has been liberated from Egypt.

Yehuda Aschkenasy (1921-2007), my Jewish teacher at the Catholic Theological University in Amsterdam, interpreted his own liberation from the extermination camps of Auschwitz and Buchenwald in the light of the Exodus out of Egypt. The miracle of Pesach is that liberation is celebrated even in most profound misery, in the Bible even before the Exodus takes place. In imprisonment, exile, yeah even in Auschwitz Pesach was celebrated to shape the paradox. We celebrate freedom in slavery, since we know that freedom has once been given.

However, looking back into the past, remembering something, is not always popular. Our society prefers something new: new experiences, new toys.

Car drivers know, however, that the driving-mirror (in fact there are often three of them) is needed for driving your car. You have to know what

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[25] For the theological and philosophical value of dreams see for example my Dreams as Revelations: Food for Theological and Philosophical Thought. In *Dreams and Spirituality,* pp. 3-15.

is behind you in order to go forward. Looking back serves going forward safely. All good and bad experiences of people serve to have a firm hand at the wheel of our own ship. Preserving, remembering, commemorating this good can often be an impetus for the future.

Also in Acts 12 Peter's imprisonment is interpreted in view of a revision of the exodus from slavery. Thus this liberation becomes a model to keep on believing that there is an exodus from exile, from imprisonment and even from death. Prison pastors will have to invite detainees to see the exodus in their own way. The main task of each and every prison pastor is, inspired by the numerous memories of Easter, to listen to the detainee's story every time in such a way that together they can fabricate a way out of despair and that for this human being as well the Exodus may be celebrated, even if it is for just a while.

Chapter 21
Lineamientos sobre la Pastoral Penitenciaria
Aportes de la Pastoral Penitenciaria del Cono Sur

Jorge García Cuerva

1. Introducción y fundamentos doctrinales

En un mundo que pretende encerrar el mal, sabemos que la violencia nunca puede superarse con violencia, sino solo por la gracia y entrega de la vida, como lo ha revelado Jesucristo. Por ello afirmamos que la cárcel no es cristiana: ella pertenece al orden viejo de este mundo que sigue utilizando medios de violencia y venganza para mantenerse.[1]

La presencia de alguien en la cárcel es mucho más que una cuestión moralista; es ocasión de denuncia, de una sociedad injusta que excluye. Nosotros también somos pecadores, sólo que nuestros pecados no están tipificados en los códigos penales de nuestros países.[2]

¿Quiénes son los que llegan a las cárceles? Nuestros pastores en el Documento de Aparecida nos dicen:

> *"Una realidad que golpea a todos los sectores de la población, pero principalmente al más pobre, es la violencia, producto de las injusticias y otros males, que durante largos años se ha sembrado en las comunidades. Esto induce a una mayor criminalidad y, por ende, a que sean muchas las personas que tienen que cumplir penas en recintos penitenciarios inhumanos, caracterizados por el comercio de armas, drogas, hacinamiento, torturas, ausencia de programas de rehabilitación, crimen organizado que impide un proceso de reeducación y de inserción en la vida productiva de la sociedad. Hoy por hoy, las cárceles son, con frecuencia, lamentablemente, escuelas para aprender a delinquir"*[3]

Esta realidad carcelaria nos interpela en nuestra fe y en lo más profundo de nuestras vidas.

Las cárceles son una ofensa a los ojos de Dios, porque sus hijas e hijos condenados a estar allí son lastimados en su dignidad[4], y en ellos Dios

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1 Cfr. *La Pastoral Penitenciaria del Cono Sur, Una mirada hacia adentro para la Misión Continental*, noviembre 2008.

2 Cfr. *Fundamentos Doctrinales, VI Encuentro de PP de América Latina y el Caribe*, noviembre de 2008.

3 DA, *427.*

4 Cfr. Is. 42,1-4. 6-7; 58,6-10; 61,1s.

mismo es violentado. Justamente son los más pobres entre los pobres. Y nuestra misión es ir al encuentro de ellos porque estamos seguros que ahí está el Señor. (Mt, 25, 36).

El pueblo de Israel, como imagen anticipada de la Iglesia, vivió la esclavitud en Egipto, Dios escuchó el clamor de su pueblo cautivo (Ex 3, 7-10; Deut. 26, 5-10), y lo acompañó en su camino de liberación, como hoy lo hace con tantos hermanos y hermanas del continente oprimidos por un sistema social imperante que es injusto y genera excluidos.

La gloria de Dios es que el hombre viva[5], ninguna persona es desechable, ni menos digna que otras, (cfr. DA, 65). Nuestra misión es luchar con todas las fuerzas por una vida digna para todos, que tiene su raíz en la vida nueva que Jesús nos regala, (cfr. DA, 33). Como el Buen samaritano, Lc 10, 25-37, queremos gastar nuestra vida en favor de nuestras hermanas y hermanos encarcelados y todos quienes de una u otra manera están sufriendo la realidad carcelaria.

La Pastoral Penitenciaria es una pastoral de la Iglesia a favor de los que, directa o indirectamente, se encuentran afectados por la realidad de la cárcel; por eso sale al encuentro de las personas privadas de la libertad, de sus familiares, de los funcionarios penitenciarios y hasta de los mismos integrantes de la administración judicial **(**implementación de la justicia), partiendo de la base de que conforman, lo que denominamos el *mundo de la carcelación*.[6]

Como personas de fe, creemos en la presencia del Reino de Dios entre nosotros; que es posible una sociedad de hermanos con estructuras justas y solidarias; para ello la Iglesia necesita una fuerte conmoción que le impida instalarse en la comodidad, el estancamiento y la tibieza, al margen de los sufrimientos de los pobres del continente (Cfr. DA, 362) y le impulse a jugarse con audacia y creatividad apostólicas, abandonando estructuras caducas que ya no favorecen la trasmisión de la fe (Cfr. DA, 365).

2. Espiritualidad

La espiritualidad como forma de vida, impregna nuestro sentir, nuestro pensar y nuestro actuar. Abarca transversalmente toda nuestra vida y dinamiza nuestra acción. Ella se basa en nuestra propia vulnerabilidad;

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5 San Ireneo (Adv. Haer. IV, 20, 7), AG 881s.

6 Respecto a este concepto vale aclarar que es un vocablo que intenta expresar toda la realidad carcelaria que es mucho más que la vida en la cárcel. Concebimos la cárcel como reflejo de una realidad social que atraviesa varios aspectos de la vida en sociedad como la educación, las políticas públicas referidas a niños y adolescentes, la familia, el modelo económico, etc. La palabra carcelación generó muchos debates; preferimos avanzar en lo que significa y no detenernos en una discusión nominalista. Por eso, algunos prefieren hablar de "ámbito de las cárceles" o "realidad carcelaria en sentido amplio".

partimos de la experiencia personal de que Jesús nos ama a cada uno de nosotros, que somos pecadores; que Jesús nos rescató, nos liberó, nos salvó. Y ese amor que hemos recibido gratuitamente, queremos que también lo experimente el otro, nuestro hermano encarcelado[7].

La espiritualidad del agente de PP parte de Dios, uno y trino, que es comunión de amor, unidad en la diversidad. Escucha el clamor de su pueblo y con entrañas de misericordia envía a su propio Hijo, quien se encarna y pone su morada entre nosotros. Asume nuestra condición humana, menos el pecado, para redimir nuestra fragilidad humana, para darnos vida, y vida en abundancia.

Sintiéndonos profundamente amados, desde un encuentro personal con Jesucristo (Cfr. DA, 243), en la comunidad (Cfr. DA, 256, 257), en la Palabra (Cfr. DA 247) y en la Eucaristía (Cfr. DA, 251), llamados a anunciar el Evangelio de la misericordia, la reconciliación y la esperanza, entre quienes Jesús mismo ama con amor predilecto por ser los más vulnerables y se identifica con ellos: *"Estuve en la cárcel… y viniste a verme…"* (Mateo 25, 11-36).

Animados por el Espíritu Santo y conscientes de nuestro propio pecado, salimos al encuentro del hermano que sufre para, con él, generar experiencias de encuentro y profunda comunión. En la dinámica de Emaús; el Maestro nos enseña la pedagogía del acompañamiento: hacernos presentes, caminar juntos e iluminar la vida desde su Palabra, que libera, compartiendo el pan que alimenta y da la vida eterna.

Reconociendo el rostro sufriente de Jesús en los hermanos (Cfr. DA 65), ser mano que bendice y que ama, que cura las heridas y calma la sed hiriente; que sostiene y convierte la tristeza en gozo, a la manera del Buen samaritano.

Como Jesús, queremos defender la vida, anunciar y denunciar desde la dimensión profética de nuestro bautismo[8]. Nos arriesgamos a defender los derechos de los excluidos con audacia y valentía, por eso afirmamos también que nuestra espiritualidad debe ser profética, sustentada en el testimonio valiente de tantos que se jugaron la vida por el Evangelio.[9]

A la vez, vemos necesario un gran esfuerzo en el discernimiento de las causas y condicionamientos de la realidad social que iluminen la acción de los cristianos para transformar la sociedad evitando así espiritualismos de evasión, más relacionados con prácticas pietistas que con un modo de vivir el Evangelio.[10]

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7 Cfr. La Pastoral Penitenciaria del Cono Sur, *Op. Cit*.

8 Cfr. Mt 3,17, Is. 42,1-4. 6-7.

9 Cfr, *Espiritualidad del agente penitenciario, VI Encuentro de PP de América Latina y el Caribe,* noviembre 2008.

10 Cfr. *Documento de Puebla*, 826.

3. Misión

La misión de la Pastoral Penitenciaria, es en primer lugar la misión de la Iglesia, de la cual la pastoral penitenciaria forma parte basado esto en un concepto de pastoral orgánica[11] y de conjunto, como proyecto diocesano y parroquial.

La Pastoral Penitenciaria quiere continuar el proyecto de Jesús de hacer presente el Reino de Dios entre nosotros, de anunciar el Evangelio del Reino de Vida a todos los hombres y mujeres del continente, especialmente a los hermanos privados de la libertad, quienes no son objeto de nuestra pastoral, sino sujetos activos de la misma.[12]

Nuestra misión quiere ser[13]:

1. Encarnada: No vamos a "dar", como si fuéramos ricos o supiéramos de antemano qué ofrecer en cada caso. No llegamos al hermano como "padre y maestro", sino encarnándonos, como el Hijo de Dios que se ha hecho *carne, habitando entre nosotros*, poniendo su *tienda entre los hombres* (Jn 1, 14).

Encarnarse significa venir para aprender, dejándonos influir por cada uno de los destinatarios de esta pastoral y sus realidades. Queremos descubrir su soledad y sus valores, para aprender a compartir con ellos el sentido de la vida.

Nos situamos en la línea de *Ex 2-4* y del *Benedictus (Lc 1,68)* donde se dice *que Dios ha visitado (y redimido) a su pueblo.* No se trata de una visita de pasada, de pura cortesía, sino de una visita de encarnación. Encarnarse significa habitar dentro, penetrar en la vida de los demás, no para imponer u obligar, no para curiosear o dar lecciones, sino para acompañar al necesitado, para compartir la vida y caminar juntos, ofreciendo cada uno al otro lo mejor que tiene. [14]

2. Humanizadora: En la profecía de Daniel la figura del *Hijo del Hombre* representa, no un individuo, sino, como él mismo dice, el "*pueblo de los Santos del Altísimo*"(Dn 7,27; cfr. Dn 7,18). Es el pueblo de Dios que no se deja deshumanizar ni engañar o manipular por la ideología dominante de los imperios. La misión del *Hijo del Hombre*, es decir, del pueblo de Dios, consiste en realizar el reino de Dios como un reino humano. Reino que no

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[11] Cfr. DA, 169, 198, 371, 401.

[12] Cfr. *Líneas de Acción, VI Encuentro de PP de América Latina y el Caribe*, noviembre 2008.

[13] Ibid. Esto fue tomado de la exposición de García Cuerva, J. & Ladrón de Geuvara, J. (2008) *La Pastoral Penitenciaria en el contexto de la Misión Continental*, Buenos Aires.

[14] Ladrón de Geuvara, J. (2000) La reconciliación: camino de Libertad, Buenos Aires.

amenaza la vida, sino que la promueve y la defiende.[15]

Jesús se presenta a los discípulos como *Hijo del Hombre*, es decir, asume como suya esta misión que es la misión de todo el pueblo de Dios. Es como si dijera a todos: "Vamos a llevar a cabo la misión que Dios nos entregó, y realizar el reino humano y humanizador que El soñó para todas y todos "; y fue lo que Él hizo y vivió durante toda la vida, sobre todo en los últimos tres años. Decía el Papa León Magno: "Jesús fue tan humano, tan humano, como solamente Dios puede ser humano". Cuanto más humano, tanto más divino. Cuanto más "Hijo del Hombre" tanto más "Hijo de Dios". Todo lo que deshumaniza a las personas aparta de Dios. Fue lo que Jesús condenó, colocando el bien de la persona humana como prioridad sobre las leyes, por encima del sábado (Mc 2,27).

En el mundo de la carcelación este es nuestro desafío: luchar contra todo lo que atente contra la dignidad de la persona humana, haciendo realidad el Reino de justicia y vida plena para todos.

3. Desde los crucificados: Jesús se identifica con los crucificados en un lugar de muerte. *"Lo llevaron al lugar llamado Gólgota, o Calvario, palabra que significa "calavera"* (Mc. 15, 22). Desde allí cuestiona al mundo, al sistema religioso imperante, y al Imperio. (Mc. 15, 38-39).

En nuestro continente hay cruces, pero no sólo cruces individuales, sino colectivas, las de pueblos enteros. Queremos ser solidarios con nuestros hermanos encarcelados, ellos también son los crucificados de hoy; pero una solidaridad encarnada, que esté dispuesta a participar de la suerte de aquellos con quienes se solidariza; si no sería un paternalismo alejado de la cruz.[16]

4. Profética, audaz y apasionada por la vida: Aparecida 552 nos invita fuertemente a recobrar el valor y la audacia apostólicos. Más adelante, el mensaje final de la V Conferencia, expresa claramente: *Con firmeza y decisión, continuaremos ejerciendo nuestra tarea profética discerniendo dónde está el camino de la verdad y de la vida; levantando nuestra voz en los espacios sociales de nuestros pueblos y ciudades y, especialmente, a favor de los excluidos de la sociedad*.[17]

El mundo de la carcelación requiere profetas que denuncien toda injusticia, que sean testigos de Jesús incluso hasta dar la vida; la cárcel no es de Dios, por lo tanto ningún agente pastoral puede desarrollar su misión sin inconvenientes, sin dificultades, porque el proyecto del Evangelio de

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15 Cfr. Mesters, C. (mayo de 2003) *Volver a los orígenes*, Ávila.

16 Cfr. Sobrino, J. (1991) on, *Jesucristo liberador*, Valladolid, pp. 297 y ss.

17 Ver también: "opción (preferencial) por los pobres" DA 128, 397 – 399, 491; Documento de Puebla: "opción preferencial por los pobres"382, 707, 733, 769, 1134, 1217, 1134

Jesús difiere totalmente del proyecto del sistema imperante que día tras día propone más cárceles, más encierro, más injusticia, más pobreza. A ello nos referimos cuando expresamos que nuestra misión debe ser cuestionadora del sistema imperante, de esa globalización sin solidaridad de la que nos hablan nuestros obispos en Aparecida, y que genera exclusión.

Somos animados como pastoral eclesial por este Espíritu profético que se nos transmite mediante la lectura orante de la Biblia, la celebración de la liturgia, y en el encuentro de amor con los hermanos encarcelados. Estos momentos nos fortalecen en la misión de servicio al proyecto del Reino de Dios y su justicia (Lc. 4, 16-20; Is 42, 1-4. 6-7, Is 61, 1-2; Mt. 25,31-46; Hebr. 13,3; Mt. 5, 1-12; Lc. 6,20-26)]. Además, nos reconocemos en la doctrina profética de la Iglesia del Concilio Vaticano II, y en su decurso en los demás documentos del magisterio de la Iglesia universal y de Iglesia de América Latina y del Caribe, en cuanto intentan actualizar el compromiso y la misión de la Iglesia.

5. Reconciliadora: Vivimos en un sistema de exclusión que considera *descartables y desechables* a muchos hermanos[18], entre ellos los encarcelados, a quienes muchos quieren matar o encerrar para siempre.

Una violencia creciente, una inseguridad que nos preocupa, parecen favorecer los deseos de venganza y de muerte para con los autores de algunos delitos, creyendo que de ese modo algo se resuelve.

Frente a este panorama, el desafío de la reconciliación, de tender puentes, de creer que el amor es más fuerte, y que la paz y la justicia van de la mano de un perdón sincero, que no olvida, pero sí da otra oportunidad a quien se arrepiente de corazón. En esto es central volver sobre la imagen de un Dios misericordioso que nos ama con locura y siempre está dispuesto al encuentro: Lc. 15, 1-32.[19].

4. Método

La palabra original *met' hodos* (griego) significa, literalmente, "camino para llegar a un fin". Así, nuestro método pastoral es fundamentalmente un camino, y nuestro camino es Jesús Cristo (Jn. 14, 6) para llegar a la vida verdadera y llena. Queremos ser sus discípulos, haciendo el camino del encuentro personal con Él[20] y haciendo su camino de servicio como buen Pastor, que da su vida en favor de la liberación, alianza y comunión con los pobres y excluidos.

Así el método debe ser:

- Evangelizador : profético, liberador y transformador;
- Personalizante: No debemos olvidar que la cárcel es un ambiente que:

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18 Cfr. DA, 65.

19 Cfr. *La Pastoral Penitenciaria del Cono Sur*, Op Cit.

20 DA 276.

despersonaliza, infantiliza, frustra, fragmenta y destruye;
- Vivencial: Nuestra fe es la transmisión de una experiencia de vida, la del mismo Jesús, y por lo tanto no es transmitir verdades abstractas y desencarnadas;
- Emancipador: Promover también la creatividad liberadora;
- Fomentador de comunión, participación y solidaridad profética en un mundo marcado por actitudes y estructuras de pecado, exclusión social y falta de perdón.

Este método nos hace verdaderamente católicos, ecuménicos, interreligiosos y nos une con todas las personas que sueñan y se disponen a colaborar con los valores y la dinámica del Reino del Dios; a la vez, marca nuestro compromiso con los tres servicios fundamentales[21] de la Iglesia – servicio de la Palabra, de la Liturgia y de la Caridad – en el mundo de la carcelación, en la perspectiva de una evangelización y liberación integral. En esta perspectiva de compromiso con la dignidad de la persona del pobre mediante la lucha por sus derechos humanos y civiles, nos sentimos también sustentados en la doctrina social de la Iglesia. Así testificamos nuestra catolicidad: abiertos para todos y el todo de la vida, superando las exclusiones; solidarios por la ciudadanía en todas las cuestiones donde las personas están sufriendo; solidarios[22] con los pobres marginalizados; viviendo una unión mediante el diálogo y la comunión de amor que acoge a los pobres excluidos como los preferidos de Dios, y la comunión con ellos como el verdadero encuentro con Dios.

De este modo queremos vivir la orientación del Concilio Vaticano II, tan vigente aún:

> *"El gozo y la esperanza, las lágrimas y angustias del hombre de nuestros días, sobre todo de los pobres y de toda clase de afligidos, son también gozo y esperanza, lágrimas y angustias de los discípulos de Cristo, y nada hay de verdaderamente humano que no tenga resonancia en su corazón. La comunidad que ellos forman está compuesta de hombres que, reunidos en Cristo, son dirigidos por el Espíritu Santo en su peregrinación hacia el reino del Padre, y han recibido, para proponérselo a todos, el mensaje de la salvación. De ahí la experiencia vital que la hace sentir y ser en realidad, íntimamente solidaria con la humanidad y con su historia."*[23]

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21 LG 25-27, 34-36; Presbyterorum Ordinis 4-6.
22 Cfr. DA, 146, 491.
23 Gaudium et Spes, 1.

5. Desafíos

Definimos un desafío como una situación o realidad que nos interpela a hacer algo para tratar de modificarla. Un desafío nos invita a superar nuestros propios límites con audacia, a reflexionar arriesgadamente sobre qué hacer frente a ese problema que nos duele y cuestiona.[24]

Nuestro primer y gran desafío es anunciar y comprometernos en llevar adelante el sueño de Dios: Un mundo sin cárceles. Para ello hay que cambiar el modelo de sociedad imperante en nuestro continente, una globalización que se transformó en un proceso promotor de inequidades e injusticias múltiples.[25]

El aumento del número de presos y la construcción de cárceles en nuestros países no son hechos aislados, tienen que ver con este modelo social que excluye y considera descartables a muchos que "esconde, guarda, deposita, aísla" en establecimientos penitenciarios que no son otra cosa que escuelas para aprender a delinquir y depósitos de seres humanos de los cuales el Estado no se ocupó desde la infancia. Por eso, y tal como lo afirma la declaración final del VI Encuentro de Pastoral Penitenciaria de América Latina y el Caribe, vemos fundamental y urgente que los gobiernos de nuestros países prioricen e inviertan en una educación pública de calidad, especialmente para los sectores más pobres y marginados.

Otro gran desafío es la convocatoria de nuevos agentes de pastoral. En consonancia con el espíritu del documento de Aparecida (156), queremos ser discípulos misioneros en el mundo de la carcelación, realidad que exige una formación seria y profunda, también de los seminaristas, futuros pastores del pueblo de Dios. También motivar a las universidades para la formación de profesionales con vocación social, consolidando la Pastoral Penitenciaria universitaria con el desafío de llevar la educación a la cárcel y la cárcel a la universidad. [26]

En relación con los estados nacionales y la sociedad civil, vemos fundamental el incidir en políticas públicas de salud, educación, vivienda, seguridad, derechos humanos, etc; exigir a los Estados la implementación de medidas y planes para los encarcelados, sin dejar de insistir con medidas alternativas a la cárcel.

Para todo esto es importante la conformación de JUCALAyC[27] en las distintas diócesis y naciones, a fin de generar la reflexión, propuesta y

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[24] Cfr. *Documento final de la PP del Cono Sur* (agosto 2009) Asunción, Paraguay. Cfr. Aparecida, 61

[25] *Documento final de la PP del Cono Sur* (agosto 2009) Asunción, Paraguay.

[26] Ibid.

[27] Juristas católicos de América Latina y el Caribe. En algunos países, Argentina entre ellos, se conformó PROCAPP, Profesionales católicos de Pastoral Penitenciaria, que intenta abarcar de modo más amplio a otras disciplinas que tienen relación con el mundo de la carcelación, más allá de los juristas u hombres del Derecho.

elaboración de proyectos de políticas públicas criminológicas, judiciales y penitenciarias donde se plasmen la visión y concepciones propias de la Pastoral Penitenciaria.

6. A modo de conclusión

Nuestros obispos en Aparecida han dedicado algunos puntos a la realidad carcelaria[28]. Sin lugar a dudas se han hecho eco de una situación cada vez más grave que viven nuestros pueblos, y que tiene su reflejo en la cárcel: la marginación, la exclusión, la escandalosa diferencia entre ricos y pobres; realidades estas que no hacen más que acrecentar la violencia y la injusticia.

A la vez, ven con preocupación que *"no se asume suficientemente en muchas de nuestras Iglesias particulares la pastoral penitenciaria, ni la pastoral de menores infractores y en situaciones de riesgo"*[29]

Por eso como Iglesia nos sentimos desafiados a ser discípulos misioneros de Cristo en el mundo de la carcelación, anunciando con valentía al Dios de la Vida y denunciando fuertemente las sistemáticas violaciones a la dignidad humana. Es una misión que nos supera enormemente; desde nuestra propia vulnerabilidad, nos ponemos en primer lugar en las manos del Señor; *la súplica sincera, que fluye confiadamente, es la mejor expresión de un corazón que ha renunciado a la autosuficiencia, reconociendo que solo nada puede*[30].

Queremos ser misioneros del Evangelio no sólo con la palabra sino sobre todo con nuestra propia vida, entregándola en el servicio, incluso hasta dar la vida, como el buen pastor de las ovejas.[31] Nuestro continente está regado por la sangre de tantos hermanos y hermanas que entregaron su vida en el martirio, su testimonio es nuestro aliento.

Y repetimos una vez más que *el sueño de Dios es el nuestro: un mundo sin cárceles*[32]; esto significa también despertar conciencia en nuestras sociedades respecto a la necesidad de un cambio de modelo socio económico que deje de generar excluidos y desechables.

Comprometernos en la construcción de una globalización que esté marcada por la solidaridad, por la justicia y por el respeto a los derechos humanos, haciendo de América Latina y el Caribe, no sólo el continente de la esperanza sino también el continente del amor fraterno, donde los más pobres, entre los que están nuestros hermanos encarcelados y sus familias, sean los principales destinatarios de la Buena Noticia[33] , que queremos anunciar y compartir con creatividad y audacia.

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28 Cfr. DA, 427-430
29 Ibid, 100
30 Ibid, 259
31 Cfr. Juan, 10, 11-18
32 Cfr. *Declaración del VI Encuentro de PP,* noviembre 2008
33 Cfr. DA, 64

Appendix
United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

Preliminary observations

Preliminary observation 1
The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management.

Preliminary observation 2
1. In view of the great variety of legal, social, economic and geographical conditions in the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.
2. On the other hand, the rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of the rules as a whole. It will always be justifiable for the central prison administration to authorize departures from the rules in this spirit.

Preliminary observation 3
1. Part I of the rules covers the general management of prisons, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to "security measures" or corrective measures ordered by the judge.
2. Part II contains rules applicable only to the special categories dealt with in each section. Nevertheless, the rules under section A, applicable to prisoners under sentence, shall be equally applicable to categories of prisoners dealt with in sections B, C and D, provided they do not conflict with the rules governing those categories and are for their benefit.

Preliminary observation 4
1. The rules do not seek to regulate the management of institutions set aside for young persons such as juvenile detention facilities or

correctional schools, but in general part I would be equally applicable in such institutions.
2. The category of young prisoners should include at least all young persons who come within the jurisdiction of juvenile courts. As a rule, such young persons should not be sentenced to imprisonment.

I. Rules of general application

Basic principles

Rule 1
All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.

Rule 2
1. The present rules shall be applied impartially. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status. The religious beliefs and moral precepts of prisoners shall be respected.
2. In order for the principle of non-discrimination to be put into practice, prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings. Measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory.

Rule 3
Imprisonment and other measures that result in cutting off persons from the outside world are afflictive by the very fact of taking from these persons the right of self-determination by depriving them of their liberty. Therefore the prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

Rule 4
1. The purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.

2. To this end, prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature. All such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners

Rule 5
1. The prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.
2. Prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.

Prisoner file management

Rule 6
There shall be a standardized prisoner file management system in every place where persons are imprisoned. Such a system may be an electronic database of records or a registration book with numbered and signed pages. Procedures shall be in place to ensure a secure audit trail and to prevent unauthorized access to or modification of any information contained in the system.

Rule 7
No person shall be received in a prison without a valid commitment order. The following information shall be entered in the prisoner file management system upon admission of every prisoner:
(a) Precise information enabling determination of his or her unique identity, respecting his or her self-perceived gender;
(b) The reasons for his or her commitment and the responsible authority, in addition to the date, time and place of arrest;
(c) The day and hour of his or her admission and release as well as of any transfer;
(d) Any visible injuries and complaints about prior ill-treatment;
(e) An inventory of his or her personal property;
(f) The names of his or her family members, including, where applicable, his or her children, the children's ages, location and custody or guardianship status;
(g) Emergency contact details and information on the prisoner's next of kin.

Rule 8
The following information shall be entered in the prisoner file management system in the course of imprisonment, where applicable:
(a) Information related to the judicial process, including dates of court hearings and legal representation;
(b) Initial assessment and classification reports;
(c) Information related to behaviour and discipline;
(d) Requests and complaints, including allegations of torture or other cruel, inhuman or degrading treatment or punishment, unless they are of a confidential nature;
(e) Information on the imposition of disciplinary sanctions;
(f) Information on the circumstances and causes of any injuries or death and, in the case of the latter, the destination of the remains.

Rule 9
All records referred to in rules 7 and 8 shall be kept confidential and made available only to those whose professional responsibilities require access to such records. Every prisoner shall be granted access to the records pertaining to him or her, subject to redactions authorized under domestic legislation, and shall be entitled to receive an official copy of such records upon his or her release.

Rule 10
Prisoner file management systems shall also be used to generate reliable data about trends relating to and characteristics of the prison population, including occupancy rates, in order to create a basis for evidence-based decision-making.

Separation of categories

Rule 11
The different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment; thus:
(a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate;
(b) Untried prisoners shall be kept separate from convicted prisoners;
(c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;
(d) Young prisoners shall be kept separate from adults.

Accommodation

Rule 12
1. Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself or herself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.
2. Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the prison.

Rule 13
All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

Rule 14
In all places where prisoners are required to live or work:
(a) The windows shall be large enough to enable the prisoners to read or work by natural light and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;
(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

Rule 15
The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

Rule 16
Adequate bathing and shower installations shall be provided so that every prisoner can, and may be required to, have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

Rule 17
All parts of a prison regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

Personal hygiene

Rule 18
1. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.
2. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be able to shave regularly.

Clothing and bedding

Rule 19
1. Every prisoner who is not allowed to wear his or her own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him or her in good health. Such clothing shall in no manner be degrading or humiliating.
2. All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.
3. In exceptional circumstances, whenever a prisoner is removed outside the prison for an authorized purpose, he or she shall be allowed to wear his or her own clothing or other inconspicuous clothing.

Rule 20
If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the prison to ensure that it shall be clean and fit for use.

Rule 21
Every prisoner shall, in accordance with local or national standards, be provided with a separate bed and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

Food

Rule 22
1. Every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.
2. Drinking water shall be available to every prisoner whenever he or she needs it.

Exercise and sport

Rule 23
1. Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

2. Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end, space, installations and equipment should be provided.

Health-care services

Rule 24
1. The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.
2. Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence.

Rule 25
1. Every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation.
2. The health-care service shall consist of an interdisciplinary team with sufficient qualified personnel acting in full clinical independence and shall encompass sufficient expertise in psychology and psychiatry. The services of a qualified dentist shall be available to every prisoner.

Rule 26
1. The health-care service shall prepare and maintain accurate, up-to-date and confidential individual medical files on all prisoners, and all prisoners should be granted access to their files upon request. A prisoner may appoint a third party to access his or her medical file.
2. Medical files shall be transferred to the health-care service of the receiving institution upon transfer of a prisoner and shall be subject to medical confidentiality.

Rule 27
1. All prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be

transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.
2. Clinical decisions may only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff.

Rule 28
In women's prisons, there shall be special accommodation for all necessary prenatal and postnatal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the prison. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

Rule 29
1. A decision to allow a child to stay with his or her parent in prison shall be based on the best interests of the child concerned. Where children are allowed to remain in prison with a parent, provision shall be made for:
(a) Internal or external childcare facilities staffed by qualified persons, where the children shall be placed when they are not in the care of their parent;
(b) Child-specific health-care services, including health screenings upon admission and ongoing monitoring of their development by specialists.
2. Children in prison with a parent shall never be treated as prisoners.

Rule 30
A physician or other qualified health-care professionals, whether or not they are required to report to the physician, shall see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary. Particular attention shall be paid to:
(a) Identifying health-care needs and taking all necessary measures for treatment;
(b) Identifying any ill-treatment that arriving prisoners may have been subjected to prior to admission;
(c) Identifying any signs of psychological or other stress brought on by the fact of imprisonment, including, but not limited to, the risk of suicide or self-harm and withdrawal symptoms resulting from the use of drugs, medication or alcohol; and undertaking all appropriate individualized measures or treatment;
(d) In cases where prisoners are suspected of having contagious diseases, providing for the clinical isolation and adequate treatment of those prisoners during the infectious period;

(e) Determining the fitness of prisoners to work, to exercise and to participate in other activities, as appropriate.

Rule 31
The physician or, where applicable, other qualified health-care professionals shall have daily access to all sick prisoners, all prisoners who complain of physical or mental health issues or injury and any prisoner to whom their attention is specially directed. All medical examinations shall be undertaken in full confidentiality.

Rule 32
1. The relationship between the physician or other health-care professionals and the prisoners shall be governed by the same ethical and professional standards as those applicable to patients in the community, in particular:
(a) The duty of protecting prisoners' physical and mental health and the prevention and treatment of disease on the basis of clinical grounds only;
(b) Adherence to prisoners' autonomy with regard to their own health and informed consent in the doctor-patient relationship;
(c) The confidentiality of medical information, unless maintaining such confidentiality would result in a real and imminent threat to the patient or to others;
(d) An absolute prohibition on engaging, actively or passively, in acts that may constitute torture or other cruel, inhuman or degrading treatment or punishment, including medical or scientific experimentation that may be detrimental to a prisoner's health, such as the removal of a prisoner 's cells, body tissues or organs.
2. Without prejudice to paragraph 1 (d) of this rule, prisoners may be allowed, upon their free and informed consent and in accordance with applicable law, to participate in clinical trials and other health research accessible in the community if these are expected to produce a direct and significant benefit to their health, and to donate cells, body tissues or organs to a relative.

Rule 33
The physician shall report to the director whenever he or she considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

Rule 34
If, in the course of examining a prisoner upon admission or providing medical care to the prisoner thereafter, health-care professionals become aware of any signs of torture or other cruel, inhuman or degrading treatment or punishment, they shall document and report such cases to the competent medical, administrative or judicial authority. Proper

procedural safeguards shall be followed in order not to expose the prisoner or associated persons to foreseeable risk of harm.

Rule 35
1. The physician or competent public health body shall regularly inspect and advise the director on:
(a) The quantity, quality, preparation and service of food;
(b) The hygiene and cleanliness of the institution and the prisoners;
(c) The sanitation, temperature, lighting and ventilation of the prison;
(d) The suitability and cleanliness of the prisoners' clothing and bedding;
(e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.
2. The prison director shall take into consideration the advice and reports provided in accordance with paragraph 1 of this rule and rule 33 and shall take immediate steps to give effect to the advice and the recommendations in the reports. If the advice or recommendations do not fall within the prison director's competence or if he or she does not concur with them, the director shall immediately submit to a higher authority his or her own report and the advice or recommendations of the physician or competent public health body.

Restrictions discipline and sanctions

Rule 36
Discipline and order shall be maintained with no more restriction than is necessary to ensure safe custody, the secure operation of the prison and a well-ordered community life.

Rule 37
The following shall always be subject to authorization by law or by the regulation of the competent administrative authority:
(a) Conduct constituting a disciplinary offence;
(b) The types and duration of sanctions that may be imposed;
(c) The authority competent to impose such sanctions;
(d) Any form of involuntary separation from the general prison population, such as solitary confinement, isolation, segregation, special care units or restricted housing, whether as a disciplinary sanction or for the maintenance of order and security, including promulgating policies and procedures governing the use and review of, admission to and release from any form of involuntary separation.

Rule 38
1. Prison administrations are encouraged to use, to the extent possible, conflict prevention, mediation or any other alternative dispute resolution

mechanism to prevent disciplinary offences or to resolve conflicts.
2. For prisoners who are, or have been, separated, the prison administration shall take the necessary measures to alleviate the potential detrimental effects of their confinement on them and on their community following their release from prison.

Rule 39
1. No prisoner shall be sanctioned except in accordance with the terms of the law or regulation referred to in rule 37 and the principles of fairness and due process. A prisoner shall never be punished twice for the same offence.
2. Prison administrations shall ensure proportionality between a disciplinary sanction and the offence for which it is established, and shall keep a proper record of all disciplinary sanctions imposed.
3. Before imposing disciplinary sanctions, prison administrations shall consider whether and how a prisoner's mental illness or developmental disability may have contributed to his or her conduct and the commitment of the offence or act underlying the disciplinary charge. Prison administrations shall not sanction any conduct of a prisoner that is considered to be the direct result of his or her mental illness or intellectual disability.

Rule 40
1. No prisoner shall be employed, in the service of the prison, in any disciplinary capacity.
2. This rule shall not, however, impede the proper functioning of systems based on self-government, under which specified social, educational or sports activities or responsibilities are entrusted, under supervision, to prisoners who are formed into groups for the purposes of treatment.

Rule 41
1. Any allegation of a disciplinary offence by a prisoner shall be reported promptly to the competent authority, which shall investigate it without undue delay.
2. Prisoners shall be informed, without delay and in a language that they understand, of the nature of the accusations against them and shall be given adequate time and facilities for the preparation of their defence.
3. Prisoners shall be allowed to defend themselves in person, or through legal assistance when the interests of justice so require, particularly in cases involving serious disciplinary charges. If the prisoners do not understand or speak the language used at a disciplinary hearing, they shall be assisted by a competent interpreter free of charge.
4. Prisoners shall have an opportunity to seek judicial review of disciplinary sanctions imposed against them.

5. In the event that a breach of discipline is prosecuted as a crime, prisoners shall be entitled to all due process guarantees applicable to criminal proceedings, including unimpeded access to a legal adviser.

Rule 42
General living conditions addressed in these rules, including those related to light, ventilation, temperature, sanitation, nutrition, drinking water, access to open air and physical exercise, personal hygiene, health care and adequate personal space, shall apply to all prisoners without exception.

Rule 43
1. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited:
a) Indefinite solitary confinement;
(b) Prolonged solitary confinement;
(c) Placement of a prisoner in a dark or constantly lit cell;
(d) Corporal punishment or the reduction of a prisoner's diet or drinking water;
(e) Collective punishment.
2. Instruments of restraint shall never be applied as a sanction for disciplinary offences.
3. Disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order.

Rule 44
For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.

Rule 45
1. Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner's sentence.
2. The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in

crime prevention and criminal justice,[1] continues to apply.

Rule 46

1. Health-care personnel shall not have any role in the imposition of disciplinary sanctions or other restrictive measures. They shall, however, pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a daily basis and providing prompt medical assistance and treatment at the request of such prisoners or prison staff.

2. Health-care personnel shall report to the director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider it necessary to terminate or alter them for physical or mental health reasons.

3. Health-care personnel shall have the authority to review and recommend changes to the involuntary separation of a prisoner in order to ensure that such separation does not exacerbate the medical condition or mental or physical disability of the prisoner.

Instruments of restraint

Rule 47

1. The use of chains, irons or other instruments of restraint which are inherently degrading or painful shall be prohibited.

2. Other instruments of restraint shall only be used when authorized by law and in the following circumstances:

(a) As a precaution against escape during a transfer, provided that they are removed when the prisoner appears before a judicial or administrative authority;

(b) By order of the prison director, if other methods of control fail, in order to prevent a prisoner from injuring himself or herself or others or from damaging property; in such instances, the director shall immediately alert the physician or other qualified health-care professionals and report to the higher administrative authority.

Rule 48

1. When the imposition of instruments of restraint is authorized in accordance with paragraph 2 of rule 47, the following principles shall apply:

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[1] See rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (resolution 45/113, annex); and rule 22 of the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) (resolution 65/229, annex).

(a) Instruments of restraint are to be imposed only when no lesser form of control would be effective to address the risks posed by unrestricted movement;
(b) The method of restraint shall be the least intrusive method that is necessary and reasonably available to control the prisoner ’s movement, based on the level and nature of the risks posed;
(c) Instruments of restraint shall be imposed only for the time period required, and they are to be removed as soon as possible after the risks posed by unrestricted movement are no longer present.
2. Instruments of restraint shall never be used on women during labour, during childbirth and immediately after childbirth.

Rule 49
The prison administration should seek access to, and provide training in the use of, control techniques that would obviate the need for the imposition of instruments of restraint or reduce their intrusiveness.

Searches of prisoners and cells

Rule 50
The laws and regulations governing searches of prisoners and cells shall be in accordance with obligations under international law and shall take into account international standards and norms, keeping in mind the need to ensure security in the prison. Searches shall be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity.

Rule 51
Searches shall not be used to harass, intimidate or unnecessarily intrude upon a prisoner’s privacy. For the purpose of accountability, the prison administration shall keep appropriate records of searches, in particular strip and body cavity searches and searches of cells, as well as the reasons for the searches, the identities of those who conducted them and any results of the searches.

Rule 52
1. Intrusive searches, including strip and body cavity searches, should be undertaken only if absolutely necessary. Prison administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches. Intrusive searches shall be conducted in private and by trained staff of the same sex as the prisoner.
2. Body cavity searches shall be conducted only by qualified health-care professionals other than those primarily responsible for the care of the

prisoner or, at a minimum, by staff appropriately trained by a medical professional in standards of hygiene, health and safety.

Rule 53
Prisoners shall have access to, or be allowed to keep in their possession without access by the prison administration, documents relating to their legal proceedings.

Information to and complaints by prisoners

Rule 54
Upon admission, every prisoner shall be promptly provided with written information about:
(a) The prison law and applicable prison regulations;
(b) His or her rights, including authorized methods of seeking information, access to legal advice, including through legal aid schemes, and procedures for making requests or complaints;
(c) His or her obligations, including applicable disciplinary sanctions; and
(d) All other matters necessary to enable the prisoner to adapt himself or herself to the life of the prison.

Rule 55
1. The information referred to in rule 54 shall be available in the most commonly used languages in accordance with the needs of the prison population. If a prisoner does not understand any of those languages, interpretation assistance should be provided.
2. If a prisoner is illiterate, the information shall be conveyed to him or her orally. Prisoners with sensory disabilities should be provided with information in a manner appropriate to their needs.
3. The prison administration shall prominently display summaries of the information in common areas of the prison.

Rule 56
1. Every prisoner shall have the opportunity each day to make requests or complaints to the prison director or the prison staff member authorized to represent him or her.
2. It shall be possible to make requests or complaints to the inspector of prisons during his or her inspections. The prisoner shall have the opportunity to talk to the inspector or any other inspecting officer freely and in full confidentiality, without the director or other members of the staff being present.
3. Every prisoner shall be allowed to make a request or complaint regarding his or her treatment, without censorship as to substance, to the central prison administration and to the judicial or other competent authorities,

including those vested with reviewing or remedial power.
4. The rights under paragraphs 1 to 3 of this rule shall extend to the legal adviser of the prisoner. In those cases where neither the prisoner nor his or her legal adviser has the possibility to exercise such rights, a member of the prisoner's family or any other person who has knowledge of the case may do so.

Rule 57
1. Every request or complaint shall be promptly dealt with and replied to without delay. If the request or complaint is rejected, or in the event of undue delay, the complainant shall be entitled to bring it before a judicial or other authority.
2. Safeguards shall be in place to ensure that prisoners can make requests or complaints safely and, if so requested by the complainant, in a confidential manner. A prisoner or other person mentioned in paragraph 4 of rule 56 must not be exposed to any risk of retaliation, intimidation or other negative consequences as a result of having submitted a request or complaint.
3. Allegations of torture or other cruel, inhuman or degrading treatment or punishment of prisoners shall be dealt with immediately and shall result in a prompt and impartial investigation conducted by an independent national authority in accordance with paragraphs 1 and 2 of rule 71.

Contact with the outside world

Rule 58
1. Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals:
(a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and
(b) By receiving visits.
2. Where conjugal visits are allowed, this right shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men. Procedures shall be in place and premises shall be made available to ensure fair and equal access with due regard to safety and dignity.

Rule 59
Prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation.

Rule 60
1. Admission of visitors to the prison facility is contingent upon the visitor's consent to being searched. The visitor may withdraw his or her consent at

any time in which case the prison administration may refuse access.
2. Search and entry procedures for visitors shall not be degrading and shall be governed by principles at least as protective as those outlined in rules 50 to 52. Body cavity searches should be avoided and should not be applied to children.

Rule 61
1. Prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law. Consultations may be within sight, but not within hearing, of prison staff.
2. In cases in which prisoners do not speak the local language, the prison administration shall facilitate access to the services of an independent competent interpreter.
3. Prisoners should have access to effective legal aid.

Rule 62
1. Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.
2. Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

Rule 63
Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the prison administration.

Books

Rule 64
Every prison shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.

Religion

Rule 65
1. If the prison contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.
2. A qualified representative appointed or approved under paragraph 1 of this rule shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his or her religion at proper times.
3. Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his or her attitude shall be fully respected.

Rule 66
So far as practicable, every prisoner shall be allowed to satisfy the needs of his or her religious life by attending the services provided in the prison and having in his or her possession the books of religious observance and instruction of his or her denomination.

Retention of prisoners' property

Rule 67
1. All money, valuables, clothing and other effects belonging to a prisoner which under the prison regulations he or she is not allowed to retain shall on his or her admission to the prison be placed in safe custody. An inventory thereof shall be signed by the prisoner. Steps shall be taken to keep them in good condition.
2. On the release of the prisoner, all such articles and money shall be returned to him or her except in so far as he or she has been authorized to spend money or send any such property out of the prison, or it has been found necessary on hygienic grounds to destroy any article of clothing. The prisoner shall sign a receipt for the articles and money returned to him or her.
3. Any money or effects received for a prisoner from outside shall be treated in the same way.
4. If a prisoner brings in any drugs or medicine, the physician or other qualified health-care professionals shall decide what use shall be made of them.

Notifications

Rule 68
Every prisoner shall have the right, and shall be given the ability and means,

to inform immediately his or her family, or any other person designated as a contact person, about his or her imprisonment, about his or her transfer to another institution and about any serious illness or injury. The sharing of prisoners' personal information shall be subject to domestic legislation.

Rule 69
In the event of a prisoner's death, the prison director shall at once inform the prisoner's next of kin or emergency contact. Individuals designated by a prisoner to receive his or her health information shall be notified by the director of the prisoner's serious illness, injury or transfer to a health institution. The explicit request of a prisoner not to have his or her spouse or nearest relative notified in the event of illness or injury shall be respected.

Rule 70
The prison administration shall inform a prisoner at once of the serious illness or death of a near relative or any significant other. Whenever circumstances allow, the prisoner should be authorized to go, either under escort or alone, to the bedside of a near relative or significant other who is critically ill, or to attend the funeral of a near relative or significant other.

Investigations

Rule 71
1. Notwithstanding the initiation of an internal investigation, the prison director shall report, without delay, any custodial death, disappearance or serious injury to a judicial or other competent authority that is independent of the prison administration and mandated to conduct prompt, impartial and effective investigations into the circumstances and causes of such cases. The prison administration shall fully cooperate with that authority and ensure that all evidence is preserved.
2. The obligation in paragraph 1 of this rule shall equally apply whenever there are reasonable grounds to believe that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed in prison, irrespective of whether a formal complaint has been received.
3. Whenever there are reasonable grounds to believe that an act referred to in paragraph 2 of this rule has been committed, steps shall be taken immediately to ensure that all potentially implicated persons have no involvement in the investigation and no contact with the witnesses, the victim or the victim's family.

Rule 72
The prison administration shall treat the body of a deceased prisoner with respect and dignity. The body of a deceased prisoner should be returned

to his or her next of kin as soon as reasonably possible, at the latest upon completion of the investigation. The prison administration shall facilitate a culturally appropriate funeral if there is no other responsible party willing or able to do so and shall keep a full record of the matter.

Removal of prisoners

Rule 73
1. When the prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.
2. The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.
3. The transport of prisoners shall be carried out at the expense of the prison administration and equal conditions shall apply to all of them.

Institutional personnel

Rule 74
1. The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of prisons depends.
2. The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.
3. To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison staff and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.

Rule 75
1. All prison staff shall possess an adequate standard of education and shall be given the ability and means to carry out their duties in a professional manner.
2. Before entering on duty, all prison staff shall be provided with training tailored to their general and specific duties, which shall be reflective of contemporary evidence-based best practice in penal sciences. Only those candidates who successfully pass the theoretical and practical tests at the

end of such training shall be allowed to enter the prison service.
3. The prison administration shall ensure the continuous provision of in-service training courses with a view to maintaining and improving the knowledge and professional capacity of its personnel, after entering on duty and during their career.

Rule 76
1. Training referred to in paragraph 2 of rule 75 shall include, at a minimum, training on:
(a) Relevant national legislation, regulations and policies, as well as applicable international and regional instruments, the provisions of which must guide the work and interactions of prison staff with inmates;
(b) Rights and duties of prison staff in the exercise of their functions, including respecting the human dignity of all prisoners and the prohibition of certain conduct, in particular torture and other cruel, inhuman or degrading treatment or punishment;
(c) Security and safety, including the concept of dynamic security, the use of force and instruments of restraint, and the management of violent offenders, with due consideration of preventive and defusing techniques, such as negotiation and mediation;
(d) First aid, the psychosocial needs of prisoners and the corresponding dynamics in prison settings, as well as social care and assistance, including early detection of mental health issues.
2. Prison staff who are in charge of working with certain categories of prisoners, or who are assigned other specialized functions, shall receive training that has a corresponding focus.

Rule 77
All prison staff shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their example and to command their respect.

Rule 78
1. So far as possible, prison staff shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.
2. The services of social workers, teachers and trade instructors shall be secured on a permanent basis, without thereby excluding part-time or voluntary workers.

Rule 79
1. The prison director should be adequately qualified for his or her task by character, administrative ability, suitable training and experience.
2. The prison director shall devote his or her entire working time to official

duties and shall not be appointed on a part-time basis. He or she shall reside on the premises of the prison or in its immediate vicinity.
3. When two or more prisons are under the authority of one director, he or she shall visit each of them at frequent intervals. A responsible resident official shall be in charge of each of these prisons.

Rule 80
1. The prison director, his or her deputy, and the majority of other prison staff shall be able to speak the language of the greatest number of prisoners, or a language understood by the greatest number of them.
2. Whenever necessary, the services of a competent interpreter shall be used.

Rule 81
1. In a prison for both men and women, the part of the prison set aside for women shall be under the authority of a responsible woman staff member who shall have the custody of the keys of all that part of the prison.
2. No male staff member shall enter the part of the prison set aside for women unless accompanied by a woman staff member.
3. Women prisoners shall be attended and supervised only by women staff members. This does not, however, preclude male staff members, particularly doctors and teachers, from carrying out their professional duties in prisons or parts of prisons set aside for women.

Rule 82
1. Prison staff shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Prison staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the prison director.
2. Prison staff shall be given special physical training to enable them to restrain aggressive prisoners.
3. Except in special circumstances, prison staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, prison staff should in no circumstances be provided with arms unless they have been trained in their use.

Internal and external inspections

Rule 83
1. There shall be a twofold system for regular inspections of prisons and penal services:
(a) Internal or administrative inspections conducted by the central prison administration;

(b) External inspections conducted by a body independent of the prison administration, which may include competent international or regional bodies.
2. In both cases, the objective of the inspections shall be to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and corrections services, and that the rights of prisoners are protected.

Rule 84
1. Inspectors shall have the authority:
(a) To access all information on the numbers of prisoners and places and locations of detention, as well as all information relevant to the treatment of prisoners, including their records and conditions of detention;
(b) To freely choose which prisons to visit, including by making unannounced visits at their own initiative, and which prisoners to interview;
(c) To conduct private and fully confidential interviews with prisoners and prison staff in the course of their visits;
(d) To make recommendations to the prison administration and other competent authorities.
2. External inspection teams shall be composed of qualified and experienced inspectors appointed by a competent authority and shall encompass health-care professionals. Due regard shall be given to balanced gender representation.

Rule 85
1. Every inspection shall be followed by a written report to be submitted to the competent authority. Due consideration shall be given to making the reports of external inspections publicly available, excluding any personal data on prisoners unless they have given their explicit consent.
2. The prison administration or other competent authorities, as appropriate, shall indicate, within a reasonable time, whether they will implement the recommendations resulting from the external inspection.

II. Rules applicable to special categories

A. Prisoners under sentence

Guiding principles

Rule 86
The guiding principles hereafter are intended to show the spirit in which penal institutions should be administered and the purposes at which they should aim, in accordance with the declaration made under preliminary

observation 1 of these rules.

Rule 87
Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same prison or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.

Rule 88
1. The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the prison staff in the task of social rehabilitation of the prisoners.
2. There should be in connection with every prison social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his or her family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

Rule 89
1. The fulfilment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups. It is therefore desirable that such groups should be distributed in separate prisons suitable for the treatment of each group.
2. These prisons do not need to provide the same degree of security for every group. It is desirable to provide varying degrees of security according to the needs of different groups. Open prisons, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to the rehabilitation of carefully selected prisoners.
3. It is desirable that the number of prisoners in closed prisons should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such prisons should not exceed five hundred. In open prisons the population should be as small as possible.
4. On the other hand, it is undesirable to maintain prisons which are so small that proper facilities cannot be provided.

Rule 90
The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the

released prisoner efficient aftercare directed towards the lessening of prejudice against him or her and towards his or her social rehabilitation.

Treatment

Rule 91
The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.

Rule 92
1. To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his or her social and criminal history, physical and mental capacities and aptitudes, personal temperament, the length of his or her sentence and prospects after release.
2. For every prisoner with a sentence of suitable length, the prison director shall receive, as soon as possible after his or her admission, full reports on all the matters referred to in paragraph 1 of this rule. Such reports shall always include a report by the physician or other qualified health-care professionals on the physical and mental condition of the prisoner.
3. The reports and other relevant documents shall be placed in an individual file. This file shall be kept up to date and classified in such a way that it can be consulted by the responsible personnel whenever the need arises.

Classification and individualization

Rule 93
1. The purposes of classification shall be:
(a) To separate from others those prisoners who, by reason of their criminal records or characters, are likely to exercise a bad influence;
(b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.
2. So far as possible, separate prisons or separate sections of a prison shall be used for the treatment of different classes of prisoners.

Rule 94
As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him or her in the light of the knowledge obtained about his or her individual needs, capacities and dispositions.

Privileges

Rule 95
Systems of privileges appropriate for the different classes of prisoners and the different methods of treatment shall be established at every prison, in order to encourage good conduct, develop a sense of responsibility and secure the interest and cooperation of prisoners in their treatment.

Work

Rule 96
1. Sentenced prisoners shall have the opportunity to work and/or to actively participate in their rehabilitation, subject to a determination of physical and mental fitness by a physician or other qualified health-care professional.
2. Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.

Rule 97
1. Prison labour must not be of an afflictive nature.
2. Prisoners shall not be held in slavery or servitude.
3. No prisoner shall be required to work for the personal or private benefit of any prison staff.

Rule 98
1. So far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release.
2. Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.
3. Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, prisoners shall be able to choose the type of work they wish to perform.

Rule 99
1. The organization and methods of work in prisons shall resemble as closely as possible those of similar work outside of prisons, so as to prepare prisoners for the conditions of normal occupational life.
2. The interests of the prisoners and of their vocational training, however,

must not be subordinated to the purpose of making a financial profit from an industry in the prison.

Rule 100
1. Preferably institutional industries and farms should be operated directly by the prison administration and not by private contractors.
2. Where prisoners are employed in work not controlled by the prison administration, they shall always be under the supervision of prison staff. Unless the work is for other departments of the government, the full normal wages for such work shall be paid to the prison administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners.

Rule 101
1. The precautions laid down to protect the safety and health of free workers shall be equally observed in prisons.
2. Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to free workers.

Rule 102
1. The maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, taking into account local rules or custom in regard to the employment of free workers.
2. The hours so fixed shall leave one rest day a week and sufficient time for education and other activities required as part of the treatment and rehabilitation of prisoners.

Rule 103
1. There shall be a system of equitable remuneration of the work of prisoners.
2. Under the system prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.
3. The system should also provide that a part of the earnings should be set aside by the prison administration so as to constitute a savings fund to be handed over to the prisoner on his or her release.

Education and recreation

Rule 104
1. Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterate prisoners and of young prisoners

shall be compulsory and special attention shall be paid to it by the prison administration.
2. So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.

Rule 105
Recreational and cultural activities shall be provided in all prisons for the benefit of the mental and physical health of prisoners.

Social relations and aftercare

Rule 106
Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both.

Rule 107
From the beginning of a prisoner's sentence, consideration shall be given to his or her future after release and he or she shall be encouraged and provided assistance to maintain or establish such relations with persons or agencies outside the prison as may promote the prisoner's rehabilitation and the best interests of his or her family.

Rule 108
1. Services and agencies, governmental or otherwise, which assist released prisoners in re-establishing themselves in society shall ensure, so far as is possible and necessary, that released prisoners are provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.
2. The approved representatives of such agencies shall have all necessary access to the prison and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his or her sentence.
3. It is desirable that the activities of such agencies shall be centralized or coordinated as far as possible in order to secure the best use of their efforts.

B. Prisoners with mental disabilities and/or health conditions

Rule 109
1. Persons who are found to be not criminally responsible, or who are later diagnosed with severe mental disabilities and/or health conditions, for

whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities as soon as possible.
2. If necessary, other prisoners with mental disabilities and/or health conditions can be observed and treated in specialized facilities under the supervision of qualified health-care professionals.
3. The health-care service shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.

Rule 110
It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric aftercare.

C. Prisoners under arrest or awaiting trial

Rule 111
1. Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as "untried prisoners" hereinafter in these rules.
2. Unconvicted prisoners are presumed to be innocent and shall be treated as such.
3. Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit from a special regime which is described in the following rules in its essential requirements only.

Rule 112
1. Untried prisoners shall be kept separate from convicted prisoners.
2. Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

Rule 113
Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.

Rule 114
Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food.

Rule 115
An untried prisoner shall be allowed to wear his or her own clothing if it is clean and suitable. If he or she wears prison dress, it shall be different from that supplied to convicted prisoners.

Rule 116
An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he or she chooses to work, he or she shall be paid for it.

Rule 117
An untried prisoner shall be allowed to procure at his or her own expense or at the expense of a third party such books, newspapers, writing material and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

Rule 118
An untried prisoner shall be allowed to be visited and treated by his or her own doctor or dentist if there are reasonable grounds for the application and he or she is able to pay any expenses incurred.

Rule 119
1. Every untried prisoner has the right to be promptly informed about the reasons for his or her detention and about any charges against him or her.
2. If an untried prisoner does not have a legal adviser of his or her own choice, he or she shall be entitled to have a legal adviser assigned to him or her by a judicial or other authority in all cases where the interests of justice so require and without payment by the untried prisoner if he or she does not have sufficient means to pay. Denial of access to a legal adviser shall be subject to independent review without delay.

Rule 120
1. The entitlements and modalities governing the access of an untried prisoner to his or her legal adviser or legal aid provider for the purpose of his or her defence shall be governed by the same principles as outlined in rule 61.
2. An untried prisoner shall, upon request, be provided with writing material for the preparation of documents related to his or her defence, including confidential instructions for his or her legal adviser or legal aid provider.

D. Civil prisoners

Rule 121

In countries where the law permits imprisonment for debt, or by order of a court under any other non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall be not less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.

E. Persons arrested or detained without charge

Rule 122

Without prejudice to the provisions of article 9 of the International Covenant on Civil and Political Rights,[2] persons arrested or imprisoned without charge shall be accorded the same protection as that accorded under part I and part II, section C, of these rules. Relevant provisions of part II, section A, of these rules shall likewise be applicable where their application may be conducive to the benefit of this special group of persons in custody, provided that no measures shall be taken implying that re-education or rehabilitation is in any way appropriate to persons not convicted of any criminal offence.

[2] See Resolution 2200 A (XXI), annex.

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