



CRIMINAL JUSTICE

A View from
South of the Border

Criminal Justice: A View from South of the Border

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In June of 2011, Father Alejandro Solalinde, a Roman Catholic priest known for his human rights work with Central American immigrants passing through Mexico, created quite a stir when in the name of the Mexican churches and society he asked forgiveness from the Zetas, a cartel considered by many to be the most dangerous and violent criminal organization in Mexico. Among the things he said during an open-air mass commemorating the deaths of those victimized by groups such as the Zetas was the following: "I beg forgiveness from you who are Zetas, from all of you who are delinquents, all of you brothers and sisters whom we have failed, who are victims of a sick society that did not know how to give you the support and the values you needed.... [You are] the first victims of a corrupt, capitalist, neoliberal, sickly and failed government.... I ask you for forgiveness in the name of that school to which you did not have access or that did not know how to educate you.... I want to ask forgiveness for those Christian churches, whether Evangelical or Catholic, that gave you only a mere smattering of religion and values, those of us who did not know how to form you in the values of Jesus Christ but on the contrary contributed to the idolatry and worship of money."¹

¹ Pedro Matías/Regina Martínez, "Pide perdón Solalinde a 'Los Zetas'; también son víctimas, aclara," *Proceso*, July 29, 2011. Retrieved

Like many others, I welcome and applaud the approval of the social statement "Hearing the Cries: Faith and Criminal Justice" by the 2013 ELCA Churchwide Assembly. It is a marvelous, carefully-crafted document that deserves to be studied and taken very seriously by people both within and outside of our church and others. Yet, like the Summer 2013 edition of *Dialog* dedicated to the theme of Criminal Justice, it does not pretend to offer a final word on the subject but to stimulate further reflection and dialogue.

Perspectives on Criminal Justice from Mexico

From my perspective, situated in the heart of a country in which crime and violence have run rampant in recent years, while we urgently need the type of reflection found in the recent issue of *Dialog* and the ELCA social statement, we also need to go much further so as to arrive at the place where Father Solalinde stands. Here in Mexico, as in most countries throughout the world, the criminal justice system is ineffective and corrupt, to say the least. According to official sources and studies carried out by reputable organizations, anywhere from 95 to 98.5% of crimes

August 15, 2013, from:
<http://www.proceso.com.mx/?p=277375>.

committed in Mexico go unpunished.² A mere 15% of those crimes are investigated, and only 4% of those investigations are concluded. Nine out of ten homicides and 94% of robberies are left unsolved. And the sad reality is that a high percentage of those who do end up being imprisoned are not the actual perpetrators of the crime of which they are accused. Rather, innocent people are arrested and convicted so that the government and authorities can point to evidence that they are indeed fighting crime effectively. In fact, only 7% of defendants tried for crimes in the Mexican penal system even appear at some point before the judge who decides their case.

A number of years ago, an uncle of my wife was tied to a chair, brutally tortured and left to die a slow death in his own home. Days passed before his corpse was finally discovered. Not only was this crime never solved but it was *never even investigated*. Why? Because there were simply not enough human and financial resources to do so. And even if the family had paid the police or a private investigator to discover who was behind this murder, it was unlikely that the true perpetrators would ever be brought to justice. In fact, the family itself would risk becoming the object of retaliation or further violence, not only at the hands of those responsible for the crime but perhaps even the police themselves.

² On this and what follows, see Israel Navarro, "Sólo se castiga 1% de delitos," *Milenio*, November 7, 2010. Retrieved August 15, 2013, from: <http://www.milenio.com/cdb/doc/noticias2011/d9733f1d182257206a2cdeac4f22fa82>; Pedro Matías, "Impunidad en México alcanza 95%, alerta oficina de la ONU," *Proceso*, January 20, 2012. Retrieved August 15, 2013, from <http://www.proceso.com.mx/?p=295536>.

If space permitted, I could share numerous stories even more heart-rending than this one regarding the way criminal justice works in Mexico. Yet this is the reality in which most people live, not only in Mexico but throughout the world. Here there is no illusion that we have created a society in which there is justice for all, as there is among so many in the U.S., and that the criminal justice system is actually fair, equitable and effective, even though that is the official discourse in Mexico, just as it is in the U.S.

From my perspective, the experience of many in places such as Mexico has also led to a much greater recognition and awareness that the failed criminal justice systems that characterize the societies in which we live are only one part of a global political, social, educational and economic system that is generating the crime and violence that is the daily bread of so many. This is precisely what Father Solalinde was getting at. When large sectors of the population are unable to satisfy their basic needs because they have little if any access to a decent education, employment, health care, and other rights and privileges that others enjoy, how can we expect anything but crime and violence? If people grow up in contexts in which they have no stable family life and are never able to acquire any solid values or experience what it is to live in a healthy relationship with another person, how can we expect them not to sell and consume drugs or join gangs and groups like the Zetas, where they can gain the sense of belonging, companionship, power, and admiration that society denies them?

Several years ago I visited a marginalized community outside of Mexico City in which a Presbyterian pastor was serving. He told me

that, due to the lack of a decent family life, education and jobs, the vast majority of youth there end up inhaling things such as glue and paint thinner—the only drugs they can afford—and as a result suffer irreparable brain damage. However, these same youth then have children whom they are unable to raise, much less educate, and subsequently even become grandparents while still in their twenties or early thirties. How can anyone hope that these children and youth will ever do anything positive or constructive in life? Instead, all that they can expect from society is to be further marginalized, denigrated and dehumanized, condemned as delinquents and criminals, and locked up behind bars for most of their life. Realities such as this are widespread not only throughout countries such as Mexico but in the U.S. as well, whether we wish to admit it or not.

Who is Responsible?

Who, then, is responsible for the crime and violence that affects us all? Are we not *all* responsible, as Father Solalinde implies? This is not to exonerate those who commit crimes and practice violence—they are responsible for their actions and must answer for them. But so must the rest of us. *All* of us are to blame for the crime, violence and injustice that exist in our world: the government, citizens and residents in general, authorities of all different types, businesses, public and private services, and institutions such as schools and churches. As a society, as communities, as families, and as individuals, we are *all* responsible for the crime and injustice that exists, and at the same time we are all victims of that crime and injustice.

Most people react strongly against such an affirmation. To consider as victims those who commit criminal acts—especially those that are particularly violent or atrocious—seems to justify their deeds, while affirming that we all share responsibility for what they have done seems unjust and to many even outrageous, as if the wrong that others do were our fault. However, if we are able to distribute wealth more equitably, provide better public education, and dedicate more resources to programs aimed at greater social justice, yet fail to do so, are we not to blame for the inequality, poverty, and injustice that breeds crime and violence? Why are topics such as how to build healthy relationships with others, how to raise children and live as part of a family, and how to manage anger, resolve conflicts and practice good communication not at the heart of our school curriculums, much less even taught formally in school? Why is the idea that every human being has a right to sufficient food, adequate shelter, good education, meaningful employment, and proper health care so controversial instead of being a no-brainer? What else but individual and corporate greed is behind the opposition to higher taxes and a greater redistribution of wealth in order to fund public programs aimed at eradicating poverty and addressing the social problems that generate the crime and violence that affect us all, whether rich, poor or middle-class?

Conversely, if we must live in constant fear, pay high costs for security, protection and criminal justice, live alienated from one another rather than in community, and continually observe the painful effects of crime and violence on those closest to us as well as others around us, are we not all

victims of the systems we have created? Is it really not in the best interest of *all* of us to live in a system characterized by justice and equity in which all have what they need? Is not the price that we all pay for *not* having such a system so much higher than the price of making it a reality?

Rethinking Justice and the Gospel of Grace

As a theologian, I would argue that underlying and supporting the unjust systems in which we live is a false theology—primarily Christian in name—that we have failed to question to the extent that we must. At its root, the problem of social and criminal justice is not primarily political or economic, but *theological*. Why? Because those systems are all ultimately based on the belief systems we share. As I claim in my most recent book *Redeeming the Gospel: The Christian Faith Reconsidered*, at the heart of the belief system we have inherited in the West is a flawed theology that wrongly divorces justice from grace, mercy, and love, putting these at odds with one another.³

As Lutherans, for example, we have become accustomed to simply turning a blind eye to the understanding of atonement as penal substitution that runs throughout Luther's writings and the Lutheran Confessions, either pretending that it is not there or passing over it lightly, instead of actively confronting it and boldly declaring it false and pernicious for the doctrine of God underlying it. We continue to hold up Luther's doctrine of the *fröhliche Wechsel* or "joyous exchange" as something to be taught

and admired rather than rejecting and condemning it for the way it pits God's justice against God's love—as if God's justice could be satisfied merely by seeing our sins punished in Christ or by something other than our truly *becoming* just and righteous with *our own* justice and righteousness, which is brought about in us through Christ and our faith in him.⁴ Until we understand and affirm fully that God's justice is not *opposed* to God's love and grace but is an *expression* of that love and grace, we cannot grasp the gospel.

Similarly, the theology we have inherited continues to see sin as something to be dealt with primarily by condemnation and punishment rather than as a sickness or disease that requires help and healing. And for that reason, following Luther, we have been taught to see God's law as a tyrannical accuser threatening sinners with destruction rather than a loving friend and ally pointing out to us our diseased condition and compelling us to seek in Christ and one another the help we need to become different persons. Instead of regarding the law as an expression of God's grace and the gospel, we oppose law to the gospel as if the law were *contrary* to grace.

In the Lutheran tradition, we have also mistakenly defined the gospel in terms of the forgiveness of sins rather than the transformation of sinners and sinful relationships at which every true act of forgiveness must be aimed. We have confused unconditional love with unconditional forgiveness, failing to recognize that to love unconditionally is not always simply to forgive and forget the wrong others have done but to demand that, for their own good and

³ What follows is taken especially from Chapter 6 of my book *Redeeming the Gospel: The Christian Faith Reconsidered* (Minneapolis: Fortress Press, 2011), 179-213.

⁴ See *ibid.*, 51-53, 62-81.

that of others, they take responsibility for their actions, admit their wrongdoing, and commit themselves to seeking and receiving the help they need in order to change. In contrast, unconditional love or grace consists of the dedication and commitment to seeking the wholeness and well-being of others, no matter what they may do or fail to do. We have failed to see that grace is not merely God's offer of forgiveness in Christ, but God's invitation and command that we follow Christ so that through him and God's Spirit we may become the people God longs for us to be for our own sake and that of others. As I have argued extensively in my book, even we Lutherans who constantly stress above all else the gospel of God's grace in Jesus Christ have still not got that gospel straight.

Grace and Criminal Justice

A proper understanding of all of these points would lead to a transformed view of what criminal justice and social justice in general must involve. The starting-point of both must be a commitment to the well-being and wholeness of each person in body, soul, mind and spirit. That means striving to do what is necessary so that all without exception have what they need to live productive and meaningful lives and enjoy healthy, loving relationships with others. Simply stated, that is a system based on grace—unconditional love—for all.

That must be the basis of the criminal justice system as well. It must be founded on a commitment to the wholeness and restoration of each person that has fallen into criminal actions. This is well-expressed in the ELCA social statement, which rightly stresses restorative justice, though surprisingly the

word "grace" is all but absent from the document—probably because the idea that justice is opposed to grace rather than being an expression of it has been ingrained so deeply into our ways of thinking that it never occurs to us to relate the two in positive fashion. A criminal justice system based on grace would be a criminal justice system that truly values and cares about every person that it deals with. However, such a criminal justice system can exist only if it is part of a social, political and economic system that is based on the same type of grace that seeks unconditionally the good of all.

This view of justice as grace calls for a distinct conception of what the execution of justice involves. True justice is not about punishing wrongdoing, as if that in itself set things right and corrected injustice, but about establishing conditions in which all have what they need and can be well and whole. When justice is viewed in that way, then we see sin, crime and wrongdoing as requiring not merely condemnation and punishment but primarily correction, wherever that is possible. We see those who have committed crimes as people who have adopted ways of being and behaving that are destructive and unhealthy and therefore need to be transformed and healed through various forms of attention, support, caring, and guidance.

That does not mean being "soft on crime," but on the contrary demanding in the strongest of terms that, for one's own good and the good of others, one recognize one's wrongs, commit oneself to putting an end to the destructive behavior that harms others together with oneself, and actively receive the help one needs to alter that behavior. Of

course, we cannot demand that others receive that help if at the same time we do not offer it to them. All of that is *grace*. At times, harsh measures and diverse forms of punishment are necessary to accomplish these things, and in the case of many, the desired objective will never be attained. But even such efforts must be regarded as an expression of grace, which does not give up on people but remains committed to their well-being.

This kind of approach, therefore, does not mean refraining from punishing those who commit crimes, but attempting to ensure that any form of punishment is an expression of love and concern for them and others. Of course, while punitive measures should be aimed at the transformation and restoration of offenders when this is possible, those measures must also have as their objective the welfare of society in general. This means that, even when the desired transformation and healing are taking place, for the good of all it may be necessary to keep some persons under confinement when there is uncertainty as to whether they may fall once more into destructive behavior that harms others as well as themselves. Yet love and grace also call for us to care for those who must remain in confinement rather than seeking to make them suffer in order to punish them for what they have done. To inflict suffering on wrongdoers as an end in itself is not justice but cruelty.

Because we have not grasped properly the nature of justice, grace and forgiveness, discussions among Christians on the topic of criminal justice have often focused primarily on the question of when to offer forgiveness and pardon. We struggle with this question, largely because we fail to distinguish between forgiveness as not seeking vengeance or harm

for others and forgiveness as refraining from inflicting punishment for wrongs committed. When Jesus talks about forgiving “seventy times seven” in Matt 18:22, he is talking about the former. Curiously, however, immediately before and after that passage he teaches that there are circumstances in which we are *not* to forgive in the second sense: those who refuse correction are to be isolated from the community (“let such a one be to you as a Gentile and a tax collector,” Mt 18:15-18), and those who fail to forgive as they have been forgiven are also to be denied forgiveness until they make amends, as the conclusion to the parable of the unforgiving servant teaches (Mt 18:23-35).

Thus, while at times unconditional love means forgiving in this second sense, at other times it means *not* forgiving but demanding that one renounce destructive behavior and commit to real change, while at the same time reaching out to offer the help necessary to make that change possible. Only when this has happened is forgiveness to be offered. When forgiveness is properly understood, persons who have been deeply hurt by the criminal actions of others are not pressured to put aside the intense anger they may feel toward those who have caused their pain but only to refrain from desiring evil and suffering for them out of a spirit of hatred and revenge. Seeking that those who destroy the lives of others are put in a position in which they can do so no longer is something very different from seeking vengeance and wanting to see others suffer in the same way that one has suffered oneself. Love *never* takes pleasure in seeing others suffer.

Forgiveness and Responsibility

As one would expect, when Father Solalinde made his comments about asking the Zetas for forgiveness, he became the object of harsh criticism. Many were outraged. Yet as Christians, when we understand what he was saying, we must make words such as his our own. We too must ask forgiveness of those who have fallen into criminal behavior and recognize that, as people who have accepted and supported unjust systems—whether actively or passively by doing nothing to change those systems—we share responsibility for what they have done. As Father Solalinde affirmed, they too *are* our beloved brothers and sisters for whom we must care deeply, no matter how much pain they have caused others. And that requires establishing and maintaining systems that express that care, love and grace in concrete ways to all who form part of them.

To ask forgiveness of those who have fallen into criminal activity, as Father Solalinde would insist, in no ways means claiming that the blame is ours alone rather than theirs, justifying the crimes they have committed, or regarding them primarily as victims rather than perpetrators. Rather, it involves assuming our own responsibility for creating and maintaining conditions that lead to crime and violence while at the same time insisting that those who have done wrong assume fully their responsibility as well. It is thus a question not of “either/or” but “both/and.” When we have grasped this, then we are able to seek together answers to the question of how to deal with those who practice destructive behavior so that they are no longer able to hurt others and can also take steps to change that behavior. As I argue in my book, as Christians we must affirm as a fundamental truth that *we are all responsible for one another*. That means demanding that all of us take responsibility not only for ourselves but for others as well, while at the same time holding ourselves accountable to others for our actions as we hold others accountable to us and to society for theirs.

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