

# WHAT'S JUST ABOUT THE JUSTICE SYSTEM?

by Dr. Marilyn Sewell

A sermon given April 9, 2000  
First Unitarian Church  
Portland, Oregon

## CALL TO WORSHIP

Good morning! Welcome to all of you. May all feel the joy and warmth of this church community. And today may all of our hearts be made more tender, more loving, more merciful. Come, let us worship together.

It happened one morning in a small town in Alabama. They still talk about it there. Ronda Morrison, an 18-year-old clerk in a dry cleaning store, was murdered. Eight months later, police arrested Ralph Myers, a 30-year-old with a long criminal record. After a week of grilling by police, Myers accused Walter McMillian, a pulpwood worker, of Morrison's murder. McMillian was arrested, and amazingly enough, was sent immediately to Alabama's Death Row in Holman State Prison.

McMillian was convicted after a 1 1/2-day trial on the testimony of three witnesses. Myers-this man with the long criminal record-testified that McMillian asked him for a ride to the cleaning store. There, Myers said, he witnessed the murder. Another criminal suspect testified that he saw McMillian's truck near the cleaner's, and a third man implicated McMillian. McMillian's lawyer called a dozen witnesses, who all testified he was at home the day of the murder taking part in a fish fry. But despite that testimony and the lack of physical evidence, he was found guilty. The jury asked for life in prison. The judge, however, citing the "vicious and brutal killing of a young lady in the first full flower of adulthood" changed the life sentence to death, as allowed by Alabama law.

McMillian, who had two jobs and no criminal record other than a misdemeanor charge stemming from a barroom fight, did not have a history of violence, but he was well known in town. McMillian was dating a white woman named Karen Kelly. And one of his sons had married a white woman. "The only reason I'm here," said McMillian, "is because I had been messing around with a white lady and my son married a white lady."

Fortunately for McMillian his death sentence saved him. If the jury's sentence of life in prison without parole had been left in place, McMillian might have been another forgotten black inmate in an Alabama prison. But because of the death sentence, McMillian's case was vigorously appealed, and the truth came to light. Every element of the prosecution's case was discredited. Myers admitted that law officers prodded him into accusing McMillian. It was found that McMillian's truck was not the one identified by his accusers. After turning down four appeals, the Alabama Court of Criminal Appeals threw out McMillian's conviction 5-0. The current county district attorney, who did not prosecute the original case, joined the defense in seeking to have the charges dismissed. But he contended that there was no deliberate effort to frame McMillian. "It just mushroomed into a horrible mistake," he said. "I don't want to call it that. A horrible incident." I would say that's something of an understatement, considering that McMillian spent six years on Death Row before he was finally released.

Only in the South, we say. But change the circumstances a little bit, and it could have been in Boston. Or Omaha. Or Bend, Oregon I tell you this story because it exemplifies so much of what happens too often in our justice system. Forced confession. Evidence withheld, Overworked public defenders who have little time to work on a case. Scapegoating because we need somebody to pin the crime on. And, of course, racism.

I'm not saying by any means that all police are corrupt, nor that all judges are blind-in fact, as a white person, I've learned that the police are my friend. I trust them. I know that their work is hard and risky, and I'm thankful that they are there.

But I have to say that my African American brothers and sisters don't feel the same way. Especially the brothers. They've been stopped by police too often for no reason other than DWB:

Driving While Black. And what about justice, what about equal treatment in the court system? Let's say a Black man kills a white woman. On the other side of the city, let's say a Black man kills another Black man. Or let's say a white man kills a Black man. Let's say they're all guilty. Who would receive the greatest punishment? Who stands the greatest chance of being executed? You guess. A Black murder defendant charged with killing a white faces a 4.3 times greater chance of receiving the death penalty than those charged with killing Blacks.

Who is in prison, anyway? They are mainly poor and uneducated and disproportionately people of color. It has been estimated that from 9 to 13% of inmates are mentally ill. People who have financial resources, people who have connections, people who can hire the best lawyers rarely go to prison. Let's take the case of O.J. Simpson. Let's not talk about whether or not you think he's guilty. Let's talk about the trial itself. The best thing he had going for him was that the jury simply couldn't believe anyone *from* the Los Angeles police department, but that was not his only advantage. My son who is in law school said that one of the lawyers on O.J.'s team came to visit his class, and he explained how O.J. won. He said the usual thing is that the defense will ask for delay after delay in the trial date so they can get their case together. But in O.J.'s case they didn't do that. You see, he could afford a whole battery of lawyers who got a very fine case together very quickly-they simply overwhelmed the prosecution, who didn't have the time or resources to put together a credible case. Everyone cannot afford the same kind of justice. They say money talks. It surely speaks loudly in the justice system.

Now I don't want to melt your brain with statistics, and that would be easy to do in a sermon like this. But just seeing some of these numbers gave me a picture, a sense of the justice system, that I never had before. First of all, the sheer number of people we are incarcerating in this country is incredible.

- In 1970, we had fewer than 200,000 inmates in prison; in 1998, we had 1,800,000. Of these 1,185,000 were imprisoned for non-violent causes.
- Since mandatory minimum sentencing for drug users has been practiced, the Federal Bureau of prisons budget has increased 1,350 %, from \$220 million in 1986 to \$3.19 billion today. Seventy-five per cent of drug arrests are for possession, not sale or manufacture. The largest single reason for the huge increase in incarceration is mandatory drug sentences-and of course those for crack cocaine are much more severe than those for line cocaine, the drug of choice for the middle class.
- Russia is the only country in the world that incarcerates more citizens than we do.
- By the early 1990's 29 % of Black men could expect to spend some time in state or Federal prison. The incarceration rate for Black women exceeds that for white men.
- In 1970 there were around 5,600 women in prison; by 1996, there were nearly 75,000, a thirteen fold increase.

- England imprisons their citizens at a rate roughly one-sixth of ours; Holland and Scandinavia, about one-tenth.
- If you count all the real costs of putting someone in prison-including corrections, judicial, legal and police-the cost is over \$72,000 per prisoner per year.

What about the goals of imprisonment-why do we send people to jail, anyway?<sup>1</sup> Criminologists cite four reasons for imprisoning people: deterrence, incapacitation, rehabilitation, and retribution. How are we doing with these four goals? Not so well on deterrence, we know. First time offenders don't seem to become virtuous after spending time with more hardened criminals-just the opposite, in fact. And once someone does get out of prison, how easy is it for him to join the rest of society?

Listen to the voice of one former prisoner: "I have been a parole officer, I have served on boards and commissions, I have involved myself in neighborhood community activities. Thirty-two years ago, though, I was a drug addict, and I ended up in prison. It was not an easy road back to an honorable life, . . . but I made it, and I managed to help a number of others along the way. In spite of what I have accomplished, this frenzy of retribution relegates me to something less than second-class citizenship. My crimes did not involve violence or assault, or the use of any kind of weapon, but even so, today I can no longer sit on a jury; I am ineligible to receive grants to further my education; I am pretty much excluded from any opportunity or activity that requires a background check. I know as well as anyone that there are dangerous people out there who have to be locked up, but the great majority of people behind bars today are "garden-variety" offenders. The threat they represent to the public lies more in what we are making of them than in anything they have done. "2

How about incapacitation, which means that as long as offenders are behind bars, they cannot commit crimes-at least against people on the outside. During the 1970's and 1980's a number of studies attempted to calculate the effect of large increases in imprisonment. The results were not encouraging. What actually happened? While it is true that rates of violent crime have gone down since 1992, we should understand that most of the decline represents a leveling off of the unprecedented rises in the preceding years. For example, juvenile arrests for crime fell by 4 0/0 in 1995, but that followed a 64 % increase in the previous seven years.

One way that we have solved part of our unemployment problem in this country is through prison labor, which could now be characterized as a growth industry and one that is very attractive to investors. As one investor said, "I used to invest in hotels. But with prisons, I can guarantee 100 percent occupancy rate every night!" In 1996 alone, 9 billion dollars in products were made by prisoners, many of them working for our Fortune 500 companies-and being paid 80 percent less than the minimum wage! Thanks to this savings, American corporations will be able to downsize by approximately 400,000 jobs. What are some of these jobs? Prisoners in Ventura, CA, have worked as flight reservation specialists for TWA. In Colorado, prisoners have worked as telemarketers for AT&T. Inmates in Washington State have packaged software and other products for Exmark, which supplies Microsoft, among others. In 1995, the industry leader, Corrections Corporation of America, was the top growth stock among all companies based in Tennessee. Its stock rose an amazing 360.5 %, and it was the fourth-best performer on the New York Stock Exchange.

In terms of rehabilitation, there is very little that goes on now-little in the way of job training, education, or even drug treatment. These are seen as frills that make life too easy for criminals. Rather, we have seen the reemergence of chain gangs, prison stripes, no-contact visits. And so we continue to recycle offenders from prison to un-supportive, chaotic communities and back again. We have a certain self-righteous satisfaction in doing so-this is morality, we say, this is justice. Really, when you get down to it, it is the last goal of imprisonment at which we do

very well-that of retribution. And when you think about it, is that even an appropriate goal? We have to ask ourselves not whether we are too "soft" on crime, but rather what works. Does a 5-year sentence work better than a 2-year sentence? Does a 5-year sentence work better than drug treatment? Does incarceration work better than high-quality prevention programs? This reminds me of a cartoon I saw once. Some city officials are standing at a window, looking out at a building that has a huge sign on it: JALE, it says. And one official says to the other, "You know, I think we should have put more money into education."

I want to share with you part of a letter from a young man whom some of you know-Ethan Thrower. (Incidentally, when I use material about a congregant, I always ask for permission, and I do have permission from Ethan.) Ethan is one of our young men-he was brought up in this church by a loving mother and father. I remember when he was one of the three kings in the Christmas pageant. He was an A student with a scholarship to college. But Ethan made some serious mistakes. He was one of a group of students from Grant High School who got involved in a series of armed robberies. Ethan is now serving out his 8\_ year sentence in Pendleton, but while he was here in the county jail, I was able to visit him. This kid wants to go right, and he has a chance-he has had tremendous support from this church and from friends and family. He has what most prisoners don't have. Just recently he wrote to me-but not just to me, but to me as a representative of this church community:

"So nice to hear from you. I talked to my dad last night and he told me he ushered in church yesterday and got a chance to talk with you. The church has been good to my family and I think my dad is glad to be giving back in some small way by ushering. Maybe in 6 years I can be his partner on Sunday mornings!

"You asked me about teachers and tutors. Three days a week I go to the computer room and can type my essays for my English and communications classes. (Ethan is taking some college courses by correspondence.) There is a teacher there who will help me edit my work. . . . That's the extent of the help I get but I'm doing pretty good. Math is hard for me. I get stuck quite often and wish I had a teacher. It's hard for me to learn math on my own.

"Thank you for arranging for me to receive your sermons in the mail. I've enjoyed reading some of them. My mom has been sending your sermons to a group of inmates that she has "adopted" since my arrest-all my co-defendants, plus some other young men. They all write back and forth, and it helps them feel like they are not forgotten.

"I understand about your busy life at church. Sometimes I wish I had you here where you could visit me every week, but I do understand the obstacles. At my bail hearing when all of you from the church showed up - I'll never forget that. I was so torn up at that time, and that gave me such strength. And your visit in the County came when I had just gone to the hole and it really did feel like God sent you to help me get through a tough time.

"Well, I have to go to work. I work in the dining room 3 times a day serving food. It's almost lunch now. Thanks for writing. I'm doing okay and keeping strong. Respectfully, Ethan Thrower."

Well, with all this investment in being tough on crime, have we solved our problem? Would it work better for Ethan if we were tougher on him? Now that we've jailed so many people, do we feel safe on the street at night and in our homes? We have to conclude that something is amiss in a society that incarcerates so many citizens and still suffers the highest crime rates in the industrial world. Our policies have clearly failed.

But nowhere have they failed so abysmally as in our re-embracing of capital punishment. Oregon is among 58 states that use the death penalty. Mark Hatfield, a Republican, struggled with the issue when he was governor, from 1959 to 1967. In 1962 a logger was put to death in the gas chamber for the murder of a woman and her young son. Although he opposed capital punishment, Hatfield did not stop the execution. "I didn't think my personal opinion should rule the laws of the state," he said. In 1964, 60 % of the voters overturned the death penalty, but the issue resurfaced in 1978, when voters reinstated capital punishment, with 75 % of the vote.

When Douglas Franklin Wright was due to be executed in 1996, Kitzhaber, a Democrat, did not intervene, for the same reason as Hatfield—he is against capital punishment, but it is the will of the people, he said. A few days before Wright's execution, several of us clergy representing different faiths went to talk with Kitzhaber, to try and persuade him to stop the execution. He had already decided, and he was not going to change his mind, he said. I think he acted out of his own sense of integrity, but I also felt from looking at his face and hearing the tightness in his voice that this decision was getting to him at a very deep level.

The night Wright was executed, we held a vigil at the church, and others of our members went to Salem, to protest the act. About half an hour before the execution, I went to a local TV station where I had been asked to interview. The atmosphere was like a circus, with people running hither and thither, much talking, a lot of energy being let loose. Getting ready for the big moment. Finally the time came. The TV cameras were not allowed inside the chamber, so the reporters had to depend upon the next best thing, the testimony of the witnesses. The witnesses were somber, but really pretty matter of fact. The death looked so easy, so painless, they said. It was just as if he had gone to sleep. My interview came next. "How do you feel," Rev. Sewell, "about this execution? How do you feel about what the witnesses just told us." I said, "I feel sick at my stomach. You see, I'm a citizen of Oregon, and so I'm responsible for this man's death. All of us as citizens are responsible. I feel sad and I feel sick."

Capital punishment is not a deterrent—no criminologist thinks that it is. Those who are executed are disproportionately poor and people of color. Mistakes are made, dirt is done, as we saw in the story of Walter McMillian. And when a person is executed, there is no way to make things right. Who dies is determined less by the crime than by politics, money and race. And the death penalty is not just for adults. One hundred sixty children under the age of 18 have been sentenced to death since 1973. Twelve states have no minimum age requirement for the death penalty. Currently, there are more than 300 people on death row known to be mentally retarded. What about cost? Should society pay to keep a murderer alive? It is more costly, much more costly, to execute a prisoner than to keep him in jail for life. Florida, with its many executions, has spent at least \$3.2 million for each prisoner executed, whereas the cost of keeping someone in prison for life would be perhaps \$500,000. So basically the only reason for executing someone is vengeance. For me, it is pretty simple: I believe killing is wrong. It's wrong if a drug-crazed person does it; it's wrong to do it for money; and it's wrong for the state to murder in cold blood. For me, it is morally repugnant. And besides that, it sends a message that violence is somehow a solution to violence.

Mark Hatfield is now leading a movement to replace the death penalty with mandatory life imprisonment without parole. Hopefully, an initiative will go before voters on November 7. If you wish to sign this petition, go to the Social Justice table after the service today, where you may add your name to my own.

What I believe we are seeing in the justice system is part of the larger cultural context of a kind of social Darwinism that has infected our thinking in this country. It's every man for himself, and the devil takes the hindmost. The strong win, and the weak lose—too bad. Our harsh treatment of those in need is justified in the name of "personal responsibility" and "the free market." We are building scores of new jails at the expense of all kinds of preventative programs that we now know are effective.

The biggest single agent of imprisonment is poverty. Our child poverty rate in the United States is around 20%—in France and Germany, it is about 6%; in Sweden, Norway, and Denmark, it is below 4%. It is increasingly clear to researchers that there is a strong connection between deprivation and crime. That's hardly surprising. We need mechanisms to blunt the edges of market capitalism. Our poorest children are stunted both emotionally and intellectually; because of their own daily struggles just to survive, the parents may not be able to raise the children

caringly; the children grow up in neighborhoods that are both dangerous and bereft of legitimate opportunities. Where else can they go, but to crime? No, of course, not every one of these children will not become a criminal-but I'm surprised that more don't, to tell you the truth. We are using our prisons to contain a growing social crisis-in lieu of social programs, we are simply putting people in jail. Poverty has become a moral issue, not an economic one. You are poor because you deserve to be poor.

You know, children don't start out as criminals. Think about these children we dedicated this morning. All the felons who fill our prisons were once trusting and innocent, like these children. They were all once held in their mother's arms. We have to ask ourselves how they get from babyhood to jail-what happens along the way to lead them there.

I believe that a society can be judged by the way it treats its weakest members. And by that measure the United States is way down at the bottom of the heap, for industrialized nations. As a religious people, I call on us to help right this wrong. If we believe in the inherent worth and dignity of all people, as we say we do, then let us be part of changing this foolish and wasteful and coldhearted system. Unless we-and I mean all of us-really believe that justice will be done, how can we have any respect for law at all? How can we teach our children the goodness of their country? How can we, even while protected with our locks and alarm Systems, how can we sleep well at night? How can our hearts and minds be at rest?

So be it. Amen.

#### PRAYER

Creator God, we know that your love is not restricted to those who have enough. Let us open our eyes to the injustices around us, and let us see how we might bring all into the circle of love and caring. We pray this day for those languishing in prison. We do not justify their crimes, but let us never forget that each one is a human being, one who longs for love and caring, just as we do. May they - and may we - not be judged by the worst that we have done. Amen.

#### BENEDICTION

Go now, with this blessing: may whatever imprisons you be gone - may you be set free. Go in love, and go in peace. Amen.

<sup>1</sup> Much of the material about criminology as well as the social analysis in this sermon is derived from the excellent book *Crime and Punishment in America*, by Elliot Curie. New York: Metropolitan Books, Henry Holt and Company, Inc., 1998.

<sup>2</sup> These are the words of Ben Butzien, who is on the advisory board of the Multnomah County Restitution Center. Included in an "In My Opinion" editorial in the *Oregonian*, date unknown.