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BIBLICAL APPROACH TO THE PROBLEM OF JUSTICE
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Israeli Law

Israeli law has derived wisdom from the cultures, where Jacob's descendants lived. Torah's casuistic provisions derive from Canaan's archaic law. There the laws of home country were the basis of administration of a case (Weiser, 1994). At the same time the nation was formed not in Palestine, but a lot of earlier. Yet in Egypt ruled unquestionably Egyptian law, it is axiomatic, that Joseph's relatives by marriage had patriarchal rules that they tried to follow. Egyptian captivity and desert wandering united Joseph's clans, common monotheistic faith integrated them into a nation, with it by mixed marriages, conquests and union treaty joined individuals and tribes. One God is the generator of history and the nations born and faded in it. He is the one, who gives the presents Israeli as model nation to the whole world to learn. Naturally it is He, who gives the model nation the Law modelling its life, around and concerning what hook to or loose its strength strange, additionally learned or rejectible norms. Faith integrates and law constitutes Israel.

The God made the holy contract with Israeli people and gave them the Law after saving them from slavery. It was not discussed on popular vote; it was validated from top to bottom on mutual knowledge of the faithlessness and dishonourableness of the people as a partner (5 Ms 9:6 – 10:5). The parties of the contract in the face of tribes and families got to know what is the prerequisite to their belonging into the whole gaining new quality. The tribes that wanted to belong together acknowledged what was in the focus of the law and began to form secondary in judicial practice. Placing oneself outside the lawful basis, one remains alone in the desert. But that means death. And so it is today as well. Moses' leaving song says clearly: "They are not just idle words for you - they are your life. By them you will live long in the land you are crossing the Jordan to possess." (5Ms 32:47).

Thus the constitution of God's people comprises of concrete life rules given from top to bottom and that can not be disputed. The value and indisputability in practice is determined by their origin. Denying them bring along worsening in the quality of life and human

relationships. The other rules that the elder of the people offers or about what are agreed upon, should be in accord with the constitution. Otherwise it is rebellion.

Theologians (Weiser) have shown how faith in Jehovah was slowly replaced by faith in Torah. Salvation that revealed God's nature and aim through leading out from Egypt, moved to the background, changing into a bare argument to the Law. The Law is from God and therefore it must be respected and followed. The secondary widened and it was easy to get lost while looking for a landmark in it. Is it not the beginning of secularisation in a way? Respect did not befall the giver but was carried over to the given. Since that the created by god tend to turn away from the Creator and to deify themselves or some part of them. Serving the false god, into what might turn all our justice.

Van Ness asks the following question: if the Law given to Israeli people was a part of their unique relation with God, where lies the importance of it for us? What is it that we have to learn of the New Testament, where Christians rather act as criminals than as judges, prosecutors, lawyers of defence or the learned in law? Does the Holy Scripture that possesses the highest authority in our lives help us to find solutions for the difficult decisions of criminal law system?

Answering to that question, Van Ness relies on New Testament and says the following: yet Jesus lived in a country that had been conquered and joined under strangers rule, he did not ignore the doctrine of the Law. He taught them, he lived following them, he confirmed that he would not change them – even the most insignificant paragraph of it can not be set aside until it is performed. But *justice* was bigger than the barely formal obeying of Pharisees to the Law (Mt 5:17-20). By healing on Sabbath day (Luke 13:10-17) Jesus did not show disrespect for the Law. He'd rather understood its meaning, lawfulness did not limit him. It is an example of using the Law as *paradigm*. Paradigm is a model. It brings forth how to act in accordance to initial principle in certain situations. Attitude to the Law as to a paradigm gives us the vantage that we are forced to handle the law not only as an ancient legislative body, but as a model which we also must achieve for. That helps us to accept the universal implementation of the Law and to be guided by it without getting stuck into the questions of uniqueness or understanding insufficiently the problems of contextuality.

Therefore just the context and uniqueness of the Law, but also the books of the New Testament and the Book of Wisdom become these essential components relying on what we can get knowledge from the Holy Scripture to rearrange our way of thinking according to how 20th century America should approach to its criminal legislation problems. These books give us all we need to receive the Law as an example of how God acted in a certain period of time with certain people, in order to lay the foundation for justice and the right people (Van Ness, 1998).

For me sympathize the approach to the Law as a paradigm of Howard Zehr and Van Ness. Yet at times Van Ness is very fundamental and conservative, he also guides his reader to understanding of the spirit and aim of the Law. He considers it important to accept the wholeness of the Bible and necessary to find between the biblical concepts of justice and concrete orders guidelines for contemporary criminal law. He admits that enacting the orders and forbiddances of the Old Testament in legislation is not thinkable, but it is possible to relate the draft legislation with the revealed truth. For that we have to understand the context of the Bible rules, theological approach, to define principles, that one or another rule protects and to derive from them correctives for the modern (criminal) law and system.

Old Testament presents the principles of law and justice as anthropomorphized characteristics of God that he meets the rebelliousness and criminality of the world. They speak of God's anger, love, mercy. Justice as well as act is easier to understand knowing the motive. They speak about God's will. They speak about punishment. The qualities of God may take the form of punishment as the result of person's acts. Why? Punishment is necessary and leads us to penitence. He guides. Besides, penitence is not the assumption to salvation, but the result. Jesus goes further: he condemns the motives and reasons. But does not punish. Because the salvation has happened.

The idea of punishment could be defended from the position of restoring one's dignity. A person has the right on punishment. That is grace too. Barth. The punishments applied to the offender must be given such a form that the forgiveness acquired us all by Jesus Christ would reveal both for the offenders and for all the others. Questionable is still the right of a man to punish the other one. Quite often it leads instead of justice to wilfulness and thus under curse. Not without reason does David prefer God's punishment to that of people. So do me.

In Israeli commune punishment served the aims of clearing the community of evil (5Ms 13:1-5) and of determent from disobedience (5 Ms 13:6-11; Ps 76:8-10). Yet even the God's reproach is meant for salvation of the evildoer. I dare to believe the same of the history of the world that speaks about grace and court (Weiser) – hence criminal work in wider sense. Most clearly it is seen in the way God treats the Israelis. For disobedience he exiled them. But at the same time that punishment was effort to win them back to him (compare Jr 29:10-14). That aspiration might be taken seriously only if one believes in god's active, intervenient and changing love. I have not met that kind of love in case of the people judging and executing punishments. Still: medieval approach to punishment as to a purifying means with its drastic practice of scourging themselves and the others shows how little people can read the idea of the law. Man still gets stuck in spelling letters. Therefore the Old Testament's general preventive practice of purification and deterrence remains humanly restricted. The order tends to remain external and demands obeying instead of understanding.

The first word has two forms: *tsedeq* and *tsedaqah* and are interpreted as “justice” or “right”. These words have come from the word that in physical sense meant “straight” and in the end gained the meaning of righteousness. Moses demanded for example, that the scales and yardsticks were *tsedeq* or right (3ms 19:36). The well known verses of the 23rd psalm confirm that Jehovah still leads us to the rails of *tsedeq* – the rails that can be walked at or the rails of justice. That meets the requirements is hence *tsedeq*. It is right or righteous.

Further on *tsedeq* changed a judicial term, that meant abstract standard or behaviour that people should observe while communicating with each other or with God. Moses gives people instructions to appoint judges, who were fair. “Righteousness (*tsedaqah*), only righteousness ask for! Abe believed in God and we are told that God considered that faith justice (*tsedaqah*) (1Ms 15:6).

The other word is *mishpat* and it means “justice” in legal sense. It refers to the law itself (Holy contract book or Moses' second book 21-23 is in Hebrew *mishpatim*). *Mishpat* means also legal rights and in order to enforce it one can turn to the court (Js 5:7); and it also means the court (Weiser).

Hence *mishpat* means the formal process of customizing *tsedaqah* that has raised certain dispute. It means legal means according to what the commune determined whether they were violated or not.

The interaction of these two words has been brought forth in Isaiah's wise but dreadful equivoque:

*And he looked for justice (mishpat),
but saw bloodshed (mishpah);
for righteousness (tsedaqah),
but heard cries of distress (tseaqah)! (Is 5:7)*

The other word of the Holy Scripture that usually is connected to justice and righteous is *hesed* that quite often is translated as "love" and is examined side by side with *justice* and *right*.

*Righteousness and justice are the foundation of your throne;
love and faithfulness go before you. (Ps 89:14)*

*I will sing of your love and justice;
to you, O LORD, I will sing praise. (Ps 101:1)*

*Continue your love to those who know you,
your righteousness to the upright in heart. (Ps 89:10)*

Sow for yourselves righteousness,

*reap the fruit of unfailing love,
and break up your unplowed ground;
for it is time to seek the LORD,
until he comes
and showers righteousness on you. (Ho 10:12)*

*I will betroth you to me forever;
I will betroth you in righteousness and justice,
in love and compassion.*

*I will betroth you in faithfulness,
and you will acknowledge the LORD. (Ho 2:19-20)*

In Hebrew there are several words that are translated into English as “love”. In this paragraph has been used the word *hesed*. At the same time “love” is misleading translation, for it (*hesed*) is always educational, related to justice not a spontaneous inner feeling. Love may express itself as *hesed*, but it may not as well. A better, yet not quite adequate word is “loyalty”.

But *hesed* is not only God’s quality. According to prophet Micah it is also an expected characteristic of human relationships:

*He has showed you, O man, what is good.
And what does the LORD require of you?
To act justly and to love mercy
and to walk humbly with your God. (Mi 6:8)*

And at last there is the word *shalom*. That wonderful word means fruition, perfection, wholeness – restored relationship. It is the relationship that that God desires to share with his people and what people should experience among them. According to Isaiah law and justice are the guarantees of peace:

*Justice will dwell in the desert
and righteousness live in the fertile field.*

*The fruit of righteousness will be peace;
the effect of righteousness will be quietness and confidence forever.*

*My people will live in peaceful dwelling places,
in secure homes,
in undisturbed places of rest. (Js 32:16-18)*

Shalom therefore means more than absence of conflicts (classic Greek meaning). It comprises also the concepts of harmony, satisfaction and reconciliation. It is an ideal condition, the community should function in. It is not the absence of crime or wars; it is at the same time security, wealth and blessing that is the result of the universal righteousness. Zehr stresses that *shalom* means absence of hostility and hatred. It is possible to solve the conflict without being hostile. He also speaks about transformative justice and he sees the transformation of the Law through Jesus to present-day. For him *shalom* means to love the person who considers himself an enemy.

Cognate to *shalom* is the word *shillum* that means compensating, restitution (2 Ms 21:36). Repayment was a punishment that was applied in case of a person who had offended community fellow member: he was claimed to compensate victim the damages in the amount many times doubled. It did not change wholesome the condition of the victim, through that was also restored the relationship between victim and offender and the in-community wholeness (*shalom*).

Risking with overmuch simplification yet at the same time reminding of the serious practical problems standing in front of our criminal law system, I'd suggest the following conclusion: to *shalom* (to peace) leads *tsedeqah* (right for righteous life), that is sustained by *mishpat* (legal system). We have been called to express *hesed* (steadfast, true love) for God and the people around us through understanding that in our community governs *shalom*, in our life *tsedeqah* and that *mishpat* carries peace and justice.

God presented people life, law and freedom. Even when being released from strangers' rule (Egypt), people could not use it. Dispensation and social freedom did not bring along justice. Because the sin originated from inside. There was universal and concrete justice,

derivable from the norm and case. It was of no use for restoring *shalom* in the commune. But God could not be mistaken giving us the law. Does it mean that the idea of the law is not so much keeping the law literally but something more? Maybe recognizing one's own malice and overcoming it with active love turned outwards? Participating in God's criminal work.

If we claim that keeping the law has been beyond power throughout the history, we admit that with the visible form of the Old Testament justice is given an invisible handrail for keeping in the right path and performing justice today as well. Justice is more than the angle derived from the law on crime and offender, withdrawing the charge and punishing. Both withdrawing the charge and punishing are parts justice in case they are not carried by indifference. It is unjust and disturbs the balance. The idea of justice is to restore the damages balance in community. Thus aimed justice is active, looking for solutions, mending relationships and healing.

What could be the handrail like, which the Old Testament Law indicates? First of all of course, the aim in the form of social justice and societal balance. Integration in faith. Criminal law should not count on Hammurapi's state and punishment-centered example, but on specifically Biblical one that Zehr and Ness indicate at. They say that Christopher Wright has brought out two indicators: life was more important than possession and human being was prior to the punishment.

Already the title of Wright's discussion "An eye for an eye" is intriguing. The author and those who refer him stress, that the idea of that and many other rules, strictly qualifying the punishment is to avoid proliferation of human violation. To define the allowable suffering. Not to allow to excecate both eyes of the offender with one eye. It means the principle of proportionality that set limits to revenge. Punishment had to take place, but it could not exceed the damage caused the victim. In case of non-violent offence against property, physical punishment or death penalty was not allowed. Instead of that, as we see later on, the offender had to compensate the harm he had caused the victim. The principle that people are more important than things had its impact on the means and rates of validated punishments as well. The Old Testament Law forbids prosecuting any other person for the deeds of the offender. The principle of individual responsibility protected the family of the offender. Protection from blood vengeance offered the city of refuge and the altar. Indeed, that principle as well as many

others, has been violated too. For example the legal protection of the least privileged groups of society: migrants, orphans and widows have often been emphasized in the law that allows speaking about the system of social protection in Israeli and Judea. Also about the moral basis of the law regulating social problems. That indeed, is in continuous conflict with customs of Bronze Age. Human dignity is created through analogy (for he is like you), heritage (God's creation) and of course through God's authority.

Zehr and Van Ness offer as solution to the crisis of crime and criminal law, the model of restorative justice, seeing and explaining it biblically. The authors consider self-evident the activeness of the congregations in the field of executing justice and punishment. Zehr's approach is more philosophical and of higher abstraction level, Van Ness handles many concrete cases and quotes lots of Bible in his argumentations. The structure of the theological part of his book is in great amount referative. Van Ness's biblicality seems to be fundamental, in appendixes he refers in opening the concepts (right, justice and shalom) to the dictionaries and some widely quoted authors (Wright, Kaiser). References to church fathers and canonic right are rare. To the authorities of restorative justice is referred more often than to reputable theologians. He is also more interested in finding affirmation for his statements than in controlling them. And in that he, of course, succeeds. Hilborn: The strength of the Van Ness's works is that it makes the readers to ask themselves about his /her faith and spirituality and also about the role in the community and as a reactor on crime. For Van Ness the problems are much more dimensional than the current prisons crisis. "These ill services, that the system itself renders the victims of offence, have worried us more and more. And we've come to believe that both the problems have common roots: contemporary way of thinking, that crime is essentially an offence of the offender against the state" (1986, pp 14-15) (Hilborn, 1998, p 3). Turning attention to the community in criminal conflict and participating in solving it, referring to the biblical grounds in looking for that solution and preferring compensations to all the other regulations is the strongest side of Ness. Zehr (but also Consedine, 1997 and Consedine & Bowen, 1999 etc) bring forth the purifying effect of conciliation and forgiveness, being thus more ideal-minded and seeming less practical for a pragmatist. That calls us to ask: whether Jesus and his approach to life and people were not practical?

The New Contract

Previously the stress was laid on Moses' law. The law, on the pretext of breaking what Jesus was judged and despite of the fact that conviction did not reach the level of justice, he was sentenced to death. Barely the court farce described in New Testament should be sufficient warning and call for banning death penalty all the people.

Jesus himself is a critical criminologist, both in his radicality and human-centeredness. He blames his contemporary lawyers and adjudicators for many things: double standards, selfishness, injustice and dishonesty. He brings forth the fact that the law has turned against man and thus has the law turned against God himself, forcing its way to His position. *Justitia* can not be the God, even if it were derived from the Holy Scripture. It is and it remains an imperfect means in claiming *shalom*. Already the nature of law in the form of narrowing and regulating makes it inferior to mercy and love. The learned in law play orientation game in the secondary, widened part of law and they do it at the cost of human being. Both working day and Sunday are that criminalized by dictations that their real celebration gets lost. Torah lawyers have lost the landmark in the maze of explanations created by them. That landmark is love (Mt 22:40), that one has to meet with each human being (Mt 5:43-45), whoever he is.

Losing the main and emphasizing irrelevant might be one of the reasons, why Jesus brings sternly correcting dimension into his statements about criminal law. Of course, he does not repeal the law. He specifies its sense and aim and stresses several essential provisions, making them stricter. He says: "Unless your righteousness surpasses that of the Pharisees and the teachers of the law, you will certainly not enter the kingdom of heaven" (Mt 5:20). Not knowing the law but justice itself must be better: in the sense of philosophy, politics and practice. Jesus corrects uncompromisingly the attitude towards fellowman and as well towards social institutions (marriage) and obligations. The whole ethics of the Sermon on the Mount reveals the essence of law as restoration and protection of God's likeness, protection of weaker from stronger (main idea of human rights) and thus creating possibilities for actualizing humanity.

The ethics of the Sermon of the Mount is also the grounds to look through the Talion. If it was given in order to restrict wilfulness and violence, then Jesus carries that demand to the

extreme. Do not resist an evil person /.../ love your enemies and pray for those who persecute you (Mt 5). And the basis of treating the others should also in justice be the highest demand: So in everything, do to others what you would have them do to you, for this sums up the Law and the Prophets (Mt 7:2).

It is human being, whom Jesus wants to purify of all the coatings covering him. For him social role or position in society does not determine the attitude. He creates his people while explaining the Holy Scripture in synagogue, healing the sick, participating in criminal process, being the accused himself and hanging on the cross. To Him belong those, who believe in Him. There are Nicodemus, Zaccaeus, and Mary Magdalene; there is the woman at the well and the regretting robber on the road. With Him are those whom He healed and purified either by being near, by teaching or nourishing, and who answered Him with faith. There is no one who is too bad to be a human being in the eyes of Jesus. Receiving the strangers, supporting and caring for people who starve, are sick or imprisoned, is the mission he leaves to his people (Mt 25). He does not take away individual responsibility, yet he adds it the principle of co-responsibility. Not in the way the old archaic cultures that made the family offender for the crime of a family member, but drawing his people's attention to the fact that not always the most cruel are punished (Luke 13:1-5).; and in the same way we could be punished as well and most probably we are (Mt 25). If the story of Siloam tower is not enough, he thrillingly repeats it with his sacrifice. He thus orientates the emancipated justice back to the frames, obliging it to focus using the lenses of love, on man's needs, not his sin. Help is always better solution than punishment, forgiveness more than revenge. The best criminal politics is good social politics, and vice versa.

We can say that Jesus and his pupils did not designate the attitude to criminal justice as they did not issue laws. The prohibition to judge (Mt 7) and the demand of endless forgiveness (Mt 18:22) were direct. And if we do not want to widen it into the ban of working in the judicature, we must handle them as prohibition to condemn the other human being. At the same time Jesus corrected the law concerning Sabbath day, Lent and death sentence (John 8:1-11). He claims that no man has the right to blame and punish the other one – who of us is without sin – and he is right. He clearly tells the woman as well how to go on with her life. This is Jesus' criminal politics.

Paul seconds Jesus with his whole life. Especially clearly comes it forward in connection with the above-said in Roman letter: You, therefore, have no excuse, you who pass judgment on someone else (Rm 2:1). The same comes forward also in Roman letter 14:10. Solidarity with the sinful “for all have sinned and deprived of God’s glory” gives us sure hope for grace (Rm 2:21) and the freedom in it (Rm 6:14). Paul stresses that external fulfilment of the law does not make one a Jew (the right one) and only circumcision of heart gives the desired result (Rm 2:28-29). The fulfilment of law lays in love that does not hurt (Rm 13:9-10). Social program is supporting the weak, forsaking revenge and blessing those who curse the others (Rm 12).

Paul’s support to natural right has had direct impact on European law: ”Indeed, when Gentiles, who do not have the law, do by nature things required by the law, they are a law for themselves, even though they do not have the law, since they show that the requirements of the law are written on their hearts, their consciences also bearing witness, and their thoughts now accusing, now even defending them” (Rm 2:14-15). On that relies also Luther’s in his grasp that secular common sense is good enough for governing.

From reformation to politics

Elenius, on whom I rely in the following discussion on Lutheranism, says: “Bible does not offer detailed guidelines for church’ criminal work, but it gives the sufficiently clear direction.

1. All the people are sinful before God, not only those who have broken the law. According to the given task the church must preach reconciliation and absolution for every one.
2. Following Jesus’ example the church with his activities has to restore the dignity what has been taken away from the discriminated minority of the society, among them the so called criminals.
3. As any legal norms system effective in any period of time, can according to the Bible be changed or invalidated by people themselves, the church has no right to confine itself in criminal work only with cure of souls or diaconia, but church must interpret in different problems social ethos and actively participate in regulation of the laws, among

them continuous regulation of preconditions for crime (Elenius, 1996).

When we think how God's Almightyness just with its intangibility and incomprehension is terrifying and comprehensible for a human being, also a sort of tension is inevitable in the small matters of His presence, no matter if we speak about justice or pedagogic, fishing or baptising. That tension forces to be awake, to know that any moment your soul might be asked for and that, what will be demanded from you is not anything belonging to you or not big, yet it is everything that you have been grown together - like feelings, thoughts and attitudes; but also something you can not explain, but what behind the feelings, thoughts and attitudes, as mysteriously like God's Almightyness is real you.

That intensity and intangibility have forced reformators and of course, the other thinkers of the old churches to make decisions about the relation of fear and mercy, for one also of the relation of justice and love, in social interactions, that all at the same time cry out for freedom the rules. Seeing and affirming the political form that any faith renewal necessarily takes, I stress the experience of fear or love hidden inside them, that as the given forces to stop for cognizing the predestination and to make decisions in seeming freedom. As the principles of decisions are in one ore another way divinatory and cognition is the given also in case of the lot spoken about natural right, then the decisions are conditional to the giver of principles and means. I here do not allow myself going in depth, but admit that it is the lot talked about standing in the palm of God, and yet the quality of human life depends mostly of our options and attitudes, these two are still but form of the relation with the palm. It does exist, even if we deny it.

Reputedly Luther's decision about that interdependent relationship was stricter than of many other Lutherans. He claimed human nature wholly corrupted and hence decidedly jerked from Catholic three-stage justice doctrine (Salumaa, Luts; Hiimägi et al). If a human being due to corruption can not derive the right principles of functioning (Luther), then the error has been programmed into everything that we do already at the Fall. With a tumble that I can not understand Luther hereby trusts the hot potato of justice into the hands princes. Unavoidably it looks like denying responsibility and a decision made on political considerations.

Naturally each power, even the most corrupted one is once and for all of God, but that only in the depth where also Devil is but God's monkey (Luther) and serving God's anger (Tillich). These are the spheres of God's almightiness, wherein begins Pantocratic leadership and that we do not know anything of, but the Revelation and the erroneous derivations, made of it due to the error programmed in. Among these derivations belong also the state and polity with its structures and orders. Luther, unlike for example Calvin, leaves the whole sphere by itself. As he has claimed that both Moses' and the golden Rule of Christ are by nature known to the Gentiles as well, hence he admits the abilities of Gentiles to divide and rule in spite of the fault of sin.

Speaking of secular and spiritual regiments, I use the help of Jaakko Elenius: to secular regiment belong all the members of the society. In the frames of that regiment the duty of the rulers is, reasonably and objectively, if necessary using compulsion and violence, to lead people to give up their selfishness and to acknowledge the rights of the others. The task of organizing community life fulfils the rulers of secular regiment punishing and rewarding society members.

In spiritual regiment governs Christ through word and sacrament. The principles of that regiment are faith, love, forgiveness and spirit, not the law, forcing, punishments and rewards.

God works through both regiments. A Christian is a member of both regiments: in the first he usually performs some profession (father, mother, judge, vassal etc). In these positions he dwells from the law and dictation of secular rulers.

According to Luther in case of these two regiments one must avoid both mixing them up and separating totally. Mixing them up leads the church to using force and violence and it confuses the rulers. If the ruler chooses the way of forgiveness, the robbers will come to power. But when secular and spiritual regiments drift apart totally, the church becomes a small separate island. In order to preserve the given by God inevitable unity of the two regiments in Lutheran theology, there are presented two solutions important for the current approach. On ground of one the church has to monitor constantly the events in the society and in case of need, to criticize social conditions and developments through its doctrine. In order to develop the society or to set a socio-political aim Lutheranism can offer no concrete models of

operating, for unlike the reformed church it does not try to Christianize secular society and to cause excessive mixing of segments.

Second interesting solution to criminal theology, stressed by Luther, is the principle of moderation (*aequitas*). Luther calls it share of love that must be brought to the area of secular regiment, where usually rule compulsory measures and rigour. Through moderation God can influence legal system and society. People performing moderation are the means of God also in justice and carrying out punishments.

Luther's grip of personification is interesting too. Justice is formed by the judge and law together. Luther dares to say that in case the decision is made in accordance with love, there is no need for books of law (Elenius, 1996).

Beginning from the end that personification has indicated the path for the free churches as well as for so called free justice school. Free justice (*freirecht*) is originally free of state and free faith is independent of church. Most of the people live following their inner sensation and the norms evolved on the impact of environment and do not know the law. Therefore legislation should rely on and obey to free justice. The judge has the right to fill in the gaps of the law relying on free justice (Ihering, Kantorowich, Fuchs) and justice is nothing more than the volition of the judge. From here developed justice sociology desiring to replace justice dogmatics (Luts).

The principle of moderation is wide both as a method and as an aim. Moderation is a demand to the ruler and must be used in interpretation of law. That essentially enables each wise and balanced intrusion to the sphere of state and obligates to intervene in case of each case of immoderateness. Severe punishments, high criminalization of community life as well as indifference towards the victims of offence, foreigners or street-children give evidence and inept and immoderate use of power and the insufficiency of legislative drafting or implementation of acts. The demand of moderation in governing and administration of justice can be seen as the back door of secular regiment that Luther leaves ajar for the church. We can ask: what is the measure of moderation? For Paul the measure for everything, also for freedom and hence for moderation is love. Despite of the seeming subjectivity, it is so.

Quite different story is that Luther himself did not confine to using the back door but intervened politics most directly. He worked purposefully and effectively for redistribution of power, assets and means. In order to weaken Pope's authority and to give more power to the princes. Of course, he did it emanating from the Holy Scripture, how else it could be!

When we look his speech on two positions (1520), then we can clearly see it (Bettenson, 1963). Like Paul in Areopag, he begins his speech with flattering and plentiful compliments to the emperor and princes. Then he stresses on the national feeling of Germans and the prince's need for power. He says that Vatican wants to be greater than the princes (the audience knew that well enough). He clearly expresses that it is his and the Holy Church's viewpoint, that secular power need not to be leaded by spiritual one and that there exist no specific clergy at all, for we all are but one Christian nation and hence the Royal priesthood (1 Pt 2:9). Luther also quotes Paul: one body, where each part has its job to serve the others (1Kr 12). We have one christening, one Gospel, one faith. He brings the example of captured seculars, who choose them a priest and makes thus a profession of position.

He warns of the cardinals as of sneaking danger. He warns, that the Romans have exploited Italy and want now do the same with Germany. The Popes have robbed us, says he, creating the "us-feeling" and steps thus among the princes (not to say: leading them). He says that while crowning Saul and David Samuel was not higher of them, also Nathan of Salomon... He calls to get rid of the Pope's authority.

The speech, not so exceptional among his other ones, was held for nationally disposed German princes and their under aged king, who had not yet strengthened his power with victories. That is wise politics, using the emotions as an attribute of leading the state authorities. And I believe that Luther did that in order to heal the church. As we know, his aim was not schism but or church the church named after him. Therefore I think that Elenius' claim, that Luther did not give the church a method or guidelines for active participation in social life, only partially right. Yes, he did not write down the methodology of his politics, yet he lived it for us like a parent lives the model of a grown-up for a child. Jesus did not write a line as well.

Turning back to Elenius, we see that in his work of criminal theology he shows two ways to the 20th century. One of them uses as a bridge Schleiermacher's and the other German idealists' approaches. When Kant (1724-1804) wanted to restore the balance damaged through crime by proportional punishment, that ought to be compensative to the categorical imperative, there Hegel (1770-1831) uses also in case of punishment his negation of the negation theory that should be affirmation of justice. Humanistically he claims that justice recognizes also the offenders right on punishment, without that the latter could not become again a law-abiding member of the society. Here we must keep in mind, that punishment without forgiveness is but revenge and forgiveness without restoring one's rights and without support, is rather indifference and hence not forgiving, for forgiving contains consideration, but consideration does not leave without help.

Unlike the other authors, Schleiermacher (1768-1834) connects penal theory more with anthropology than public law. The punishment should repair and improve what is good in man. Therefore the penal justice reforms with Protestant background that that keep their aim to heal the offender, are more or less influenced by Schleiermacher, who finds that church must support the kind of reforms. Modern Lutheran and reformed theologians must choose between the two approaches or synthesize a new one. Most of them (Althaus, Elert, Künneth) have proceeded from state or Creation theories and thus chosen the Kantian way, the bulk of the Reformed proceed from Christology. Decisive is what Jesus Christ himself has done for sinful man. That is Reconciliation. Both Schleiermacher and Barth have been against death penalty. In Barth's approach the whole criminal work must be orientated at saving the human being and punishment becomes a part of cure of souls as well.

In his summary Elenius draws among others the following conclusions:

1. According to Christian discussion of man all the people are sinful before God, not only those who have been selected as criminals in the society. It is not Biblical to consider the crimes that have been revealed or criminals exceptional deeds or people.

2. Due to sin of man the socium created by people need legal norms for principles organizing their life. When these norms protect life and support the weak and feeble, the responsible power for their functioning is God's servant.

3. Each socium gains legal norms from ethos dominating in the society on the basis of natural sense and human experience. As long as these norms respect the uniqueness and wholeness of each person created by God - at the same time both the offenders and his victims -, they fulfil the conditions obliged them by the Bible and are “Christian”.

4. According to Christian way of thinking the written norms and laws do not compile static legal status that crimes can rock and that are “restored” by punishments equal to the degree of offence.

5. From the abovementioned proceeds that the means imposed on the offender can not be interpreted as “negation of the negation”, but rather as “affirmation of the negation”. Thinkable are only the means that make ease the return of the offender among fellowmen: eating, drinking and communicating with adulterers, prostitutes and gatherer has Jesus given his disciples the obligation and model to help the people who have been proclaimed exceptional, back to the society.

6. It is possible that with his doctrine of regiments Luther has made an attempt to the carry the message of Jesus’ Sermon of the Mount into justice theology. Although he approved of sovereignty of secular superior power in his sphere of responsibility, he stressed the obligation of Christians to act as supervisor of superior power and in case of need, as its critics. From the judges active in secular positions he demanded also justice in their decisions and stressed the constantly regenerative, changing nature of justice. Lutheran social ethics has run into somewhat different direction from the father of the doctrine. Lutheran theology of the past and current centuries has bound criminal-theological understandings first of all with the doctrine of state and superior power as of systems established by God. When the given Biblical initial point has been influenced by justice philosophy of German idealism as well, the Lutherans have one-sidedly stressed the value of retaining justice and system on the cost of offender’s humaneness and future. It is not occasional, that most of the Lutheran thinkers recommend absolute penal theories, although they do not quite co-inside with the message of Gospel and forgiving. Proceeding from the above said we may assume that criminal work of Lutheran churches lays stress on diaconia, because prior has been and is the solidarity with the criminal policy practiced in the society. Therefore the only sensible form of criminal work is serving, orientated to the convict (Elenius, 1996).

While Luther tried to handle these two regiments as a whole, his disciples did not always want to see it that way. That might take the form of estrangement from reality and ostrich policy. Overlooking the problems of secular regiment, we actually overlook also the needs of hundreds of thousands people. Taking no interest in their social and political rights and needs, we actually can not recognize or fulfil their religious rights and needs. Both, human being and the world are wholesome at least in the sense that cure of souls should reach all the levels. Where to cure for souls does not reach, there is no church or salvation. I would not like to happen to be there. It would look like Hell or even is Hell.

Secular rulers do not want to see the wholeness of secular and spiritual, also the co-operation for people based on autonomy of church and state. We should not forget that most of the princes of Luther's period were not religiously indifferent or faith-hostile. They came from mythological and superstitious, but still Christian Middle Ages. The background of today's rulers is often different. The chaos of values in Eastern Europe shows it especially clearly. The feeble religious rush of the people of post communist countries demonstrated religious vacuum, need for faith and as well inability and incapability to live following faith. Why deny, also the diluted and injured church could not fill that vacuum and answer the need.

The chief specialist on programs of the Centre of Social Rehabilitation, trainer of prison chaplains and rehabilitation workers, Master of environmental sciences James W. Hilborn asks in the foreword of Van Ness' book "Crime and its victim", if in a so deeply secular society the model of restorative justice is possible at all. Is it possible in varied society, which is multicultural, multiracial and multifaith? What is meant by community? Van Ness's model relies on the members of religious community, fellow Christians. Is there space for the other religions, humanists, atheists and non-believers? (Hilborn, 1998, p 3).

In today's East Europe we should first look at the renewal of the church and religious communities as at the presumption of survival. But tomorrow's Europe is that close, that we can not overlook it. Hilborn's background is of multicultural Canadian environment with its religious variety and his question seems to proceed from that background. In our context asking the same questions is of preventive and future orientated character. As a matter of fact, European cultural space of its ideas, heritage and history is post Christian. More and more coloured fugitives bring along Eastern and Islamic influences, immigrants from the post

communist countries bring religious indifference and nihilism, from Africa come still Christian believers, but also the bearers of completely pagan beliefs. When about a thousand and two thousands years ago European variety has been geographically decomposed, then in the third millennium it is mingled as well in physical as in spiritual and in the migration forced by computers. Church' social work, standing in European space and on its heritage, but even more by entering cyberspace, meets on each levels transformation and mingling and direct challenges.

Living and working in the Estonian language and legal space we must consider the constant varying of that space. How to maintain the paradigmatic identity in Christ while renewing in the form? Who will integrate the Albanians, the English- and Finnish-speaking people? And the largest part of our society outside the church in the face of Russians, Belorussians and Ukrainians? These are both the church and socio-political questions, in order to answer them there must be clear understanding in us. And the importance of criminal work as the model for the whole social work is not irrelevant here. These processes, changes and groups have been noticed and taken into account, while working with most endangered groups and of high criminal risk groups. Criminal activity of non-Estonians is about one-fourth higher than in case of natives. It is possible to block it with protection factors and thus to prevent both, strictly criminal and social conflicts also. Religiosity and integration into a congregation are undeniably effective preventive factors besides offering social guarantees (*Faith in Action*).

I have already pointed out noted the fact, that unlike the widespread false opinion the object of the church criminal work is not only welfare of the convicts. Yes, the church does not leave the needs of these people out of the circles of its attention, but these circles are concentric. In the centre there is sin. Sin lays in unbelieving. Observing Luther's approach of faith Tillich stresses, that belief does not mean the prerequisite for grace or believing in impossible things, but being reached by divine reality, by reunion with it. Faith, says Luther, is God's gift. Faith is the dynamic shock of soul, who receives that what is absolute and ultimate, and who unites with God's will (Tillich). Faith itself is revelation of grace. Unbelieving is not accepting the grace. Lack of faith leads to disunion with God and people. And that disunion reveals itself in all the other spheres of injured humanity, mankind and human activities. Sin reveals itself in immoral legislation, immoral applied norms and in ordinary everyday choices.

Some of these choices are criminalized, some are not. Criminalized and non-criminalized, but the choices equally infected with sin, traumatize people in the form of social conflicts. Prevention and solving of these conflicts is one of the tasks of the church in the field of society work, and that understanding has grown out of the practical experience of church criminal work. Let us glance at the world, trusted us that confirms that experience.

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