

## FORGIVING SIN AND PUNISHING CRIME

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In June 1989 Trevor Dodd, then aged 27, walked into the Newcastle Police Station accompanied by his solicitor and confessed to having killed a young woman in Sydney 10 years earlier. He said that he was coming forward because he wished to pay whatever debt he must in the hope that the feelings of guilt he had harboured for the preceding 10 years would diminish to such an extent that he could get on with living the rest of his life.

In a signed confession he disclosed his responsibility for a particularly serious homicide. He was at the time unemployed and in his own words *"heavily involved with alcohol and LSD"*. One evening he met the victim Elizabeth Nagy at a discotheque at Kings Cross. He never found out her name, but thought she was about 17 or 18 years of age. He took her to his flat. They got into bed together. When the girl refused to have sexual intercourse Dodd lost control and in his outrage strangled her. He later attempted to burn the body. Although the partially decomposed and burnt body was discovered soon after, the cause of death and the reasons for her disappearance remained a mystery for ten years.

Yet Dodd was tormented by feelings of guilt. His history of drug abuse continued. Dodd was later converted to Christianity and his conversion brought with it a marked improvement in behaviour. The sentencing judge held that *"a most striking proof"* of the genuineness of his Christian conversion was that he came forward and confessed to a crime with which he would never have been connected. Dodd was prepared to suffer whatever were the appropriate consequences so that having paid his debt he could then get on with living a decent life. His contrition was beyond question. He was said to be *"a different man to the man who committed the crime"*.

Dodd pleaded guilty to manslaughter. Sentencing law requires that a person is entitled to a discount on sentence where a guilty plea shows genuine contrition and saves the community the expense of a contested trial. And Dodd was entitled to added leniency because of his voluntary disclosure of a crime which would otherwise have remained completely undetected. It was also clear that there was a minimal risk that Dodd would offend again. Indeed the sentencing judge thought that a fixed custodial sentence could impair his rehabilitation by depriving him of the regular support of his fellow church members. These factors, coupled with the circumstances of Dodd's disturbed background in his teenage years, led an experienced Supreme Court judge to impose a sentence of 3 years imprisonment to be served by way of periodic detention, ie weekend gaol.

There was something of a public outcry, fuelled by the media. The Crown appealed against the leniency of the sentence and the Court of Criminal Appeal held that it was manifestly inadequate. A sentence to full penal servitude for a fixed term of 3 years was substituted. It was recognised that there could be circumstances where the proper sentence for manslaughter was periodic detention, a sentence which would enable an offender to remain in employment and minimise disruption to family life. Nevertheless the appeal court was satisfied that a fixed gaol sentence was called for. The central part of its reasoning was as follows:

*... making due allowance for all relevant considerations, there ought to be a reasonable proportionality between a sentence and the circumstances of the crime .... Each crime ... has its own objective gravity .... There is sometimes a risk that attention to persuasive subjective considerations may cause inadequate weight to be given to the objective circumstances of the case .... We consider that to have happened here. In our view the requirement of a reasonable proportionality with the circumstances of the crime called for a significant full-time custodial sentence.*

See **Trevor Vernon Dodd** (1991) 57 A Crim R 349.)

## **GOD'S FORGIVENESS AND GOD'S JUSTICE**

Forgiveness is rooted in the gracious nature of God. *"The Lord our God is merciful and forgiving, even though we have rebelled against him"* (Dan 9:9) NIV). God is described in Nehemiah as a *"forgiving God"* (Neh 9:17). The writer of Exodus speaks of *"The Lord, the Lord, the compassionate and gracious God, slow to anger, abounding in love and faithfulness, maintaining love to thousands, and forgiving wickedness, rebellion and sin"* (Ex 34: 6-7).

The New Testament shows that this nature is exemplified, indeed perfected, in and through Christ. During his earthly life our Lord forgave the sins of individuals with his father's authority (Mk 2:10) and through his atoning death both proclaimed God's forgiveness and delivered it once and for all to those who would receive it (Matt 26: 28, Eph 4:32, Acts 5:31). The forgiveness offered by God is complete and totally effective. Thus the Psalmist tells us that *"as far as the east is from the west, so far has he removed our transgressions from us"* (Psalm 103:12). Not only are they thus put out of reach (in Micah's words hurled *"into the depths of the sea"* (Micah 7:19); they are put out of God's mind (Is 38:17, Jer 31:34), indeed out of existence (Is 43:25, 44:22. Ps 51:1, 9; Acts 3.19).

The writer of the Exodus passage I have already quoted about God's forgiving nature nevertheless adds explicitly in Exodus 34:7 that *"he does not leave the wicked unpunished"*. The fundamental basis of just retribution at God's hand is also expressed unequivocally in Galatians 6:7-8 and Hebrews 2:2. The latter passage speaks of *"every violation or disobedience"* receiving *"its just punishment"*.

Exactly how men and women appropriate divine forgiveness and the consequences of not doing so are vital issues, none the less so for being the subject of much vexed theologising. *"Vital"* in both its figurative and more literal senses. In not dwelling on this I must not be taken to be minimising its importance. I trust that all of us here will treat it as a *"given"*.

My topic **Forgiving Sin and Punishing Crime** seeks initially to go past this essential and critical issue of the individual's right relationship with God, to examine his or her relationship with those who are wronged and with society as a whole. A right relationship with God may be the catalyst for steps taken with a view to re-establishing a right relationship with society (as Trevor Dodd's story shows). It may also lead to reparation (a general word for making amends) and restitution (a more particular restoration of what has been wrongly taken). Of course restitution may not be possible if the victim is dead or unknown or unwilling to receive it, or if the wrongdoer is unwilling or unable to offer it.

Many offenders who go to gaol appear to feel no remorse and offer no restitution or other visible signs of a true repentance. Our criminal justice system must do the best it can with the remorseful and the impenitent, the fearful and the arrogant, the offender capable of reformation and the seemingly intractable. Trevor Dodd was hardly the typical criminal who comes up for sentencing in our courts. But his case raises some fundamental questions about wrongdoing, guilt, punishment and remission.

Can it be said that in punishing Trevor Dodd society failed to offer him forgiveness? Why did the Court feel it had to impose the particular fixed sentence so long after the event when the genuineness of Dodd's contrition was beyond dispute? What role (if any) did the Courts play in God's plan for Trevor Dodd and Australia generally?

I can do no more than humbly venture some thoughts on these vast questions.

## **THEORIES OF PUNISHMENT**

The philosophical debate on punishment has been dominated by two main types of theories of punishment, the utilitarian theory and the retributive theory. One is essentially forward-looking; the other backward-looking.

The utilitarian theory justifies punishment solely in terms of its beneficial effects or consequences. It shares with all consequentialist theories the belief that ultimately the only morally significant features of an act are the good and bad consequences produced by it. Of course utilitarians have different views as to what is good and how to achieve it. In the present context, the benefits of punishment are seen in terms of its contribution to the reduction of crime. The infliction of punishment on the offender can only be justified, on a utilitarian basis, if it prevents greater suffering. It aims to do this through segregating (or incapacitating) and reforming the particular offender, and through deterring the offender and would-be offenders generally.

As the judgment in *Dodd's Case* makes plain, the law rejects a purely utilitarian approach to penology. Unless you abstract the matter to an absurd degree, no amount of rationalisation about maximising whatever is good for society (ie deterrence) or Trevor Dodd in particular (ie reformation) can explain the moral imperative that underpins the harsher sentence imposed on appeal. It might be argued that it was essential for Dodd's own wellbeing that he should be punished **because** he had become "*a very different man to the man who committed the crime*", but one suspects that he might have been satisfied with the three year's periodic detention initially imposed. If not, this may possibly have been because he, like the judges on appeal, perceived that in some indefinable way the original punishment did not fit his crime.

In stressing the objective factors of the killing and the need to ensure "*a reasonable proportionality between a sentence and the circumstances of the crime*" the Court of Criminal Appeal was pointing to something in the commission of the crime itself which **merited** the higher punishment.

This is the retributive approach to penology. In *Crime, Guilt, and Punishment: A Philosophical Introduction* C L Ten identifies and describes retributive theories of punishment as follows:

*“Retributivists regard the offender's wrongdoing as deserving of punishment, and the amount of punishment should be proportionate to the extent of the wrongdoing. The offender's desert, and not the beneficial consequences of punishment, is what justifies punishment. Retributivists differ in the details of their explanation of how punishment is supposed to give the moral wrongdoer what he or she deserves. Some of them regard the punishment of wrongdoers as derivative from a fundamental axiom of justice that wrongdoers deserve to suffer. Other retributivists try to*

*connect punishment with broader issues of distributive justice, or justice in the distribution of the benefits and burdens of social life. The offender is viewed as someone who has taken an unfair advantage of others in society, and punishment restores fairness."* (pp4-5).

To the exasperation of the philosophers, the law seeks to straddle both utilitarian and retributive theories. *Dodd's Case* illustrates this. Regrettably neither theory offers much guidance as to what particular sentence is appropriate.

In a justly famous essay called *The Humanitarian Theory of Punishment*, C S Lewis bemoaned the modern tendency to abandon the notion of just retribution and replace it entirely with humanitarian concerns both for the criminal and for society as a whole. Lewis argued that the complete abandonment of the notion of just retribution would mean that every lawbreaker is deprived of the rights of a human being because the humanitarian theory removes from punishment the concept of desert. He stressed that *"the concept of desert is the only connecting link between punishment and justice. It is only as deserved or undeserved that a sentence can be just or unjust"*. In his words *"When we cease to consider what the criminal deserves and consider only what will cure him or deter others, we have tacitly removed him from the sphere of justice altogether; instead of a person, a subject of rights, we now have a mere object, a patient, a 'case'"*. (Passages quoted in J Stott *The Cross of Christ* pp101 -2.)

In arguing to retain the notion of punishment as something which is deserved (although deterrence and reformation are also important) it is important to observe that punishment does not do away with the crime. The past cannot be changed. Punishment cannot restore life to the deceased or restore wholly the victim of serious assault. It is true that some victims can be compensated for the harm done to them, but reparation or restitution will seldom be measurable, even if the offender has the means to pay. Nevertheless, the modern concern with the impact on the victim of both crime and punishment is to be welcomed. It reflects a more holistic approach to penology, one which locates the convicted offender in the society he or she has wronged and not on its outer fringes.

## **PERSONAL RESPONSIBILITY FOR WRONGDOING AND ITS CONSEQUENCES: CRIME AND SIN.**

One common thread running through all retributivist theories is the idea of personal responsibility. This is reflected in the shared moral and legal principle that requires proof of a guilty mind before inflicting serious punishment. In doing this, the law assumes that human beings are free to make choices and are responsible for the choices they make.

Even where offences identical in their objective circumstances are involved, a sentencing Judge is required to have regard to subjective factors such as the age and antecedents of the offender, as well as the background circumstances which brought him or her to the particular offence. In recent years the law has become more finely tuned in its recognition of the psychiatric and cultural aspects of diminished responsibility. For all these reasons it is, in my view, irresponsible to fix mandatory penalties which preclude the judge from giving effect to subjective matters in appropriate cases.

Humanly speaking, it is seen as morally unacceptable to have a scapegoat. Not even the most ardent utilitarian would seek to justify the conviction and punishment of an innocent person even if it could in some way be shown that this might lead to desirable ends such as the prevention of future crime. This attitude about punishing the innocent is of course a pointer to a gulf between human justice and God's Justice - but of atonement, more later.

As Christians we believe that every sin we commit is the expression of a spirit of revolt against God. Thus when David committed adultery with Bathsheba and arranged the murder of her husband Uriah he recognised that it was against the Lord that he had sinned (2 Sam 12:13; Ps 51:4). It was to the Lord that he confessed, and it was the Lord in his grace who released David from the customary death penalty for adultery and murder. David was however required to suffer the disciplinary results of his sin in a manner open to public view, with the death of his first son to Bathsheba (2 Sam 12:13-19).

John Stott suggests that it is a deep-seated reluctance to face up to the grave nature of sin which has led to its omission from the vocabulary of many of our contemporaries (*op cit* p90). The American psychiatrist Karl Menninger has written a book entitled *Whatever Became of Sin?* He notes first that “*many former sins have become crimes*”, so that responsibility for dealing with them has passed from church to state, from priest to policeman, while others have dissipated into sickness, or at least into symptoms of sickness, so that in their case punishment has been replaced by treatment. A third convenient device called “*collective irresponsibility*” has enabled us to transfer the blame for some of our deviant behaviour from ourselves as individuals to society as a whole or to one of its many groupings.

Dr Menninger goes on to plead not only for the reinstatement of the word “*sin*” in our vocabulary, but also for a recognition of the reality which the word expresses. Sin cannot be dismissed as merely a cultural taboo or social blunder. It must be taken seriously. Faced with events such as the massacre at Port Arthur or the recent stabbing of young schoolchildren in Japan many commentators want to

find a single, simple answer like guns or psychiatric disorder. We all know that the problem is much more complex.

In denying individual moral responsibility for conscious wrongdoing we would deny an inalienable aspect of our human dignity. To say that a person is "*not responsible*" for his or her actions is to demean that person as a human being. As Stott puts it,

*"It is part of the glory of being human that we are held responsible for our actions."* (*op cit* p101)

In emphasising this I must of course acknowledge that there are some who, through age or medical illness are not responsible, at least in a moral or criminal sense.

#### **THE GOALS OF CRIMINAL JUSTICE FOR THE INDIVIDUAL OFFENDER**

Elizabeth Fry and other Quakers who were involved in prison reform in the early nineteenth century believed that firm discipline and other deprivations, such as shorn hair and the wearing of uniforms, were needed to promote what she called "*that humiliation of spirit which ... is (an) indispensable step to improvement and reformation*". (Quoted in Ignatieff, *A Just Measure of Pain* (1978) p144.)

Whilst most if not all retributivists, including sentencing judges, hope that the punishment may be an effective instrument of moral transformation, the high rates of recidivism suggest that these hopes are seldom realised. We simply do not know whether a person who is punished for a wrongful act will realise that his or her act was wrong as the result of the punishment. We certainly cannot guarantee this realisation, let alone reformation.

To very many prisoners, a long sentence in the dehumanising atmosphere of an overcrowded gaol will only promote frustration, anomie, anger, and contempt for society and its laws. At best we can hope that fear of being caught again will keep them out of serious trouble in the future. At worst, we know that many will offend again and again. So long as we cling to retributivist notions we must acknowledge that we will drive some prisoners away from repentance and reformation rather than towards it. This is a fundamental dilemma faced by our system of criminal justice.

A French criminologist once wrote that "*it is not enough that wrong-doers be justly punished. They must if possible judge and condemn themselves.*" (P Aynault, *L'Ordre, Formalite et Instruction Judiciaire* 1.1 Ch 14, quoted in RA

Duff, *Trials and Punishments* (1986) p233). In pursuit of this elusive goal the criminal law and the criminal trial may be seen as communicative exercises which seek the assent and participation of those whom they address. As RA Duff puts it in a recent work entitled *Trials and Punishments*.

*“The trial seeks to engage the defendant in a rational dialogue about the justice of the charge which she faces, and to persuade her - if that charge is proved against her - to accept and make her own the condemnation which her conviction expresses. Laws and trial respect the citizen as an autonomous agent.. they aim to guide her conduct by offering her relevant reasons for action.”* (p233)

(The use of the feminine pronoun in this passage is in the original.)

The author goes on to examine whether the process of **punishment** which follows trial and conviction also seeks the offender's assent and participation, and the extent to which it achieves such an aim. This approach flows from the legal assumption to which I have already drawn attention, ie that all subjects of the criminal law are moral agents who are members of a moral community.

If we accept that some, possibly most, criminals will not be driven to remorse and reformation by a hard penalty, should we increase the dose (like an electric current) until the offender winces with pain? Or should we abandon the exercise in all cases because the majority of such punishments cannot be proved to have any positive impact so far as society is concerned.

In fact we take neither of these arguably logical steps. In part this reflects the way in which the notion of just retribution operates as a **brake** upon the harshness of punishments at the same time as a **spur** on purely utilitarian considerations. In part too this is due to the embracement of deterrence as a goal in itself, although we know that any sentence (hard or light) may have little deterrent effect. Purely pragmatic factors are also in play, because the current system sometimes works and because we find it difficult to devise anything better.

The sentencing judge cannot get inside the mind of the person in the dock. This hinders communication, even if the offender is open to receive it. Yet to abandon the attempt to convey a proper sense of moral outrage is to assume that the criminal is beyond redemption. This the judge should never do. I believe that he or she owes it to the offender, as a morally responsible human being made in God's image, to try to communicate in an attempt to bring about a process of genuine self-motivated reformation. But moral outrage requires the judge to address the criminal as a morally responsible, though fallen, fellow human being. (I am told that some American judges come off the benches and shake the hand of

the sentenced offender after delivering sentence.) Judicial use of language such as "*thug*" and "*animal*" scarcely assists in any such goal.

John Braithwaite's theory of reintegrative shaming is causing fundamental rethinking of criminal justice policy in many countries. In his prize winning book ***Crime, Shame and Reintegration***, Professor Braithwaite argues that societies with low crime rates are not those that punish most efficiently, but those that shame most effectively. Some forms of shaming - called stigmatisation - can however actually make crime problems worse. Stigmatisation makes things worse by casting offenders out from communities of care. Reintegrative shaming disapproves the evil of the deed while refusing to stigmatise the offender as an evil person. Disapproval of law-breaking is expressed within relationships of respect rather than of degradation. Degraded offenders turn to criminal subcultures to sustain their self-respect, offenders who are shamed reintegratively are more likely to continue to care about the favourable regard of the law-abiding community.

I guess that this theory rings bells with most parents.

## **RETRIBUTION AND FORGIVENESS**

Those who criticise the retributive theory argue that it is unable to give a constant account of the duty of forgiveness and its relation to the duty of punishment. Why, they ask, is there a duty to punish and never a right to forgive? Can forgiveness ever be lawful? Must a person be punished even if the victim wishes to forgive?

As far as judicial punishment is concerned, forgiveness does not arise. Only the victim can forgive, and legal punishment is imposed by the State, which is not a victim save in a metaphorical and rather circular sense. Forgiveness is not the judge's business. Even when the State offers a pardon this is a remission of punishment, not a forgiveness. Strictly speaking a pardon says nothing about whether or not society acknowledges that no offence occurred, which is why Lindy Chamberlain was satisfied with nothing less than the quashing of her conviction. A pardon can be based on an injustice that occurred at the trial or because the convicted person, though clearly guilty, provided assistance to the police, or in a gaol riot. In each such case the State is not forgiving the initial wrong but wiping out the punishment by a further administrative act.

In fact, forgiveness and punishment are not opposites, but complementary notions. Surely the parent or teacher who punishes a child can also offer forgiveness. And surely someone can ask for forgiveness even after he or she has

been fairly punished. As Philip Bean puts it in his monograph on *Punishment: A Philosophical and Criminological Inquiry*, ((1981) p9):

*“The opposite of punishment is not forgiveness, for the opposite of forgiveness is resentment and ill-will. To forgive is to refuse to nurse resentment, or to try to refuse to nurse resentment: it means that one no longer says to the person 'you have done me an injury which I shall always remember and hold it against you'.”*

I will deal later with mercy as distinct from forgiveness.

## **HUMAN FORGIVENESS AND GOD'S FORGIVENESS**

We as individuals are commanded in Scripture to forgive those who wrong us even though they show no remorse. I confess that I find this aspect of loving our enemies a very difficult precept to apply.

We must forgive others *"from the heart"* if we are to indicate our own true repentance towards God. See the Lord's Prayer, the parable of the unmerciful servant (Matt 18:23-35), Colossians 3:13, and Luke 6:37. We are not to repay evil for evil (Romans 12:17). Our Lord taught. *“Love your enemies, do good to those who hate you, bless those who curse you, pray for those who mistreat you”* (Luke 6:27-28). When Stephen prayed for his murderers when dying, he was following Jesus' example and his instructions: see Acts 7:60, Luke 23:34, Matt 5:44.

In proclaiming that we are to overcome evil with good by feeding and giving drink to our enemy, St Paul declares a note of optimism that we should never overlook. Perhaps it should also serve as a note of encouragement to the most casehardened sentencing judge. Whilst it may often be hard to accept that good can overcome evil, the converse is well within our grasp. The problem of repaying evil for evil is that we add to the overall tally.

I was fascinated to learn that the heaping of burning coals on an enemy's head, of which St Paul speaks in the passage in Romans about loving our enemies (Romans 12:20, quoting Prov 25:21-22) may refer to an Egyptian expiation ritual in which a guilty person carried a basin of glowing coals on his or her head as a sign of repentance. This would help explain St Paul's concluding remark that we should not be overcome by evil, but overcome evil by good (Romans 12:21).

When we do manage to forgive and love those who have wronged us, we may or may not succeed in overcoming evil with good, just as a judge may or may not succeed in bringing about the personal reformation of the offender who is

sentenced. But we, **unlike** the judge, are bound to forgive because this is commanded as a response to and a representation of our own position as forgiven sinners. **Unlike** the judge, we in our private capacity must turn the other cheek. If this personal outworking of our own gratitude as forgiven sinners happens to affect the future behaviour of our surprised enemy so much the better.

It would of course be totally wrong to confuse the nature of our reluctant acts of forgiveness with God's outpoured mercies.

*“True (Stott points out), Jesus taught us to pray: 'Forgive us our sins, as we forgive those who sin against us'. But he was teaching the impossibility of the unforgiving being forgiven, and so the obligation of the forgiven to forgive, as is clear from the Parable of the Unmerciful Servant; he was not drawing any parallel between God and us in relation to the **basis** of forgiveness. For us to argue, we forgive each other unconditionally, let God do the same to us' betrays not sophistication but shallowness, since it overlooks the elementary fact that we are not God. We are private individuals, and other people's misdemeanours are personal injuries. God is not a private individual, however, nor is sin just a personal injury. On the contrary, God is himself the maker of the laws we break, and sin is rebellion against him.” (op cit, p88)*

## **THE ROLE OF THE STATE AS A DIVINE INSTRUMENT**

It is highly relevant that St Paul immediately follows his discourse in Romans 12 against private revenge with the famous passage in Romans 13 about submission to the governing authorities and their function in bringing punishment to wrongdoers as God's agent. This shows that St Paul saw no dichotomy between private forgiveness and public punishment, and that he saw a role for the latter in God's wider purposes. Evil is to be punished, not by private vengeance or retaliation, but as God's prerogative.

How then does God punish evil? Obviously at the "day of God's wrath, when his righteous judgment will be revealed" (Romans 1:5). But God's wrath and justice are also revealed and delivered before then. Firstly, by the progressive deterioration of a godless society (see Rom 1: 18-32). Secondly, through the judicial processes of the State, since the law enforcement officer is "God's servant, an agent of wrath to bring punishment on the wrongdoer" (Romans 13:4). As Dr Cranfield puts it in his commentary on **Romans** (vol II p666) the State is, in this sense, "a partial, anticipatory, provisional manifestation of God's wrath against sin".

And, like the judge who hopes that private reformation will come from public chastisement, God in the "**provisional** manifestation" of his wrath against sin, delivered on earth through his agent the State, wants and intends that the wrongdoer will at last truly repent and reform. The Bible frequently speaks of the disciplinary motive for God's punishments, as we learn from Hebrews 12:5 and 6, where a passage from Proverbs is quoted:

*“My son, do not make light of the Lord's discipline, and do not lose heart when he rebukes you, because the Lord disciplines those he loves, and he punishes everyone he accepts as a son.”*

In referring to the State and its judicial ministers as instruments of divine as well as human justice I must not be taken to suggest infallibility. Judges and juries must strive to do their best with the horrendous tasks of determining guilt and sentencing, but mistakes obviously occur. Judges are human, as we are constantly reminded in the media these days.

## **RETRIBUTION AND MERCY**

A short time ago I compared retribution and forgiveness. I argued that the two should be seen as complementary, not opposite, notions. A person can be forgiven whether or not the parent, victim or judge imposes a punishment. Often it is no business of the punisher to forgive anyway. In human terms forgiveness involves the abandonment of the resentment or ill-will that one might ordinarily expect would flow from a wrong done towards the forgiver. It is independent of the wrongdoer's remorse or repentance. Indeed we are to forgive even those who refuse to acknowledge that they have wronged us.

In this sense human forgiveness leaves the wrong unresolved. Relationships remain impaired because the wrong which stands unacknowledged or unrequited is not annulled simply by the graciousness of the person who turns the other cheek.

But mercy is very different to forgiveness. Still talking in human terms, we can see that mercy operates to remit or modify a punishment whilst necessarily **acknowledging** that an offence has been committed. So called "merciful acquittals" occur, but a true acquittal (morally speaking) is an entitlement, not an act of mercy.

Judicial mercy does not deny justice but softens it. A merciful judge would take account of human frailty, distress or possible destitution. But we would not usually expect the judge to be merciful where the offender failed to show contrition and the prospect of reformation. Remorse without genuine repentance will not be enough to lead even to an expectation of mercy. To be "*weakly*

*merciful*” in such circumstances (in the words of a former NSW judge whenever he was about to increase the penalty imposed by another) would also serve to expose others to harm. This is because the offender will scarcely see the sentence as a denunciation of his or her crime, and because others will fail to be deterred. As one writer put it, “*One ought not to be merciful at the cost of others - to do so would be to defeat what is thought to be the main point of exercising mercy, namely to avoid suffering*” (A Smart, “Mercy” in H B Action ed, *The Philosophy of Punishment* (1989) p218).

So far I have, I stress, been talking of human mercy, especially as demonstrated by a judge towards a penitent criminal. But, as *Dodd's Case* illustrates, such human mercy cannot be offered at the expense of ignoring a just retribution. If it were, and if the Court had simply said to Trevor Dodd “*That's OK, let bygones be bygones*”, our **human** sense of injustice would have cried out to the heavens. Together with Trevor Dodd himself, society saw the absolute need for the criminal to get what he **deserved** before the broken relationships flowing from the killing could start to be healed.

I believe that this dim picture of **human** justice should be seen as a pale reflection of God's perfect vision of justice. Like Trevor Dodd we all have done things which we cannot put right with our victims, our society and (by our own efforts) our God. And like him, we can neither retrace our steps nor regain full peace of mind. We may suffer remorse and indeed truly repent. Yet the wrong remains and the fractured relationships cannot be restored to wholeness by our own efforts.

What we need is not just mercy, but forgiveness and remission. That is, we want to have the remission of any punishment which our own sense of justice tells us is due. But (unless we are completely desensitised) our own psychological needs and personal sense of justice will (like Trevor Dodd) recognise the call for a deserved retribution. And, if our **human** sense of justice prohibits “*weak mercy*” for judges, on both utilitarian and retributivist grounds, can we expect less from God? And if we are unwilling to suffer any fitting punishment for the unrequited wrongs we have done to others and to God, what is to be done?

I said that I would get back to the atonement of Christ. I am sure you are aware how it provides the missing piece in the jigsaw I have constructed.

My favourite legal iconoclast, Grant Gilmore has written that:

*“In Heaven there will be no law, and the lion will lie down with the lamb .... In Hell there will be nothing but law, and due process will be meticulously observed”.* (*The Ages of American Law* (1977) p111)

Whatever our understanding of Heaven, the absence of law there is not through lack of concern for justice but because its demands have already been satisfied perfectly.