

resolve what environmental justice really is – a value, legal rule or general clause – which constitutes an invariably interesting and weighty research issue.

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Luciano EUSEBI, *La Chiesa e il problema della pena. Sulla risposta al negativo come sfida giuridica e teologica* (Brescia: Editrice La Scuola, 2014), page count 188, ISBN 978-88-350-3562-6.

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Punishability of crimes and their prevention in church legal order has been the subject of detailed studies done in the light of doctrine since the new law for the Latin Church was promulgated; the amended Code – having its hermeneutic underpinnings in the documents of the Second Vatican Council – reorganised the area of prohibited acts with respect to the newly classified offences and updated the rules of conduct with respect to an alleged offender and a victim.

The necessity for such a reflection is augmented by the awareness of the radically different character of the church community in comparison to any other social organisation. The difference between the goals of the lay community and the ecclesiastical community derives from quite divergent foundations of their legal orders and – despite numerous similarities in their system solutions – it is impossible to put an equation mark, both in theoretical and

practical terms, between models developed by the said orders with respect to the necessity of punishing an offender and the threat of imposing or declaring a relevant penalty, a fact which implies the need for a different treatment of the complexity of the issue at stake.

The presented monograph, written by prof. Luciano Eusebi, who is an unquestioned authority among Italian criminal law specialists, a member of the State Commission for the Reform of the Penal Code of the Italian Republic, takes up the said issue to address punishment and models of punishability in the perspective of dialogue between theology and law. The Author wants to make us more sensitive to the actual discord between the universal idea of justice – conceived as a pre-existing idea of a retributive, negative response of the legal order to an evil act – and salvation realised in Jesus Christ. The intention of the Italian jurist is to convince the Reader of existing and feasible alternative models of justice as opposed to the traditional theory of penalty repression, once developed and popularised by Kant and Hegel. Such a conviction stems from a thorough examination of biblical texts, in which the conclusions, on the one hand, do not negate the existence of punishment and revenge as a consequence of committed evil, while on the other they show the evolution of the reflection existing in ancient Israel in respect of personal experience of God, a merciful Creator and radically different from a vengeful God who demands an equivalent repayment for an act of wrongdoing.

The Author tackles the subject in the course of eight chapters, the first two providing solid arguments – based on the analysis of the most famous biblical texts and plentiful comments that accompany them – undermining the credibility of the popular conviction that God must inflict punishment for committed sins or offences. The Author invokes one of the oldest procedural models that are alternative to revenge, namely he makes reference – in the context of the story of Joseph and his jealous brothers – to a kind of conduct called *rib*, provided for by the Jewish law and interpreted as an antithesis of the dynamism of retribution. Relying on the exegesis of the divinely inspired texts, Eusebi holds that the formulation of a valid accusation in general was intended to bring about a change in the heart of a wrongdoer. Moreover, the *rib* was not an instrument serving to disclose a maximally objective truth during the taking of evidence. This procedure would be used to induce an internal transformation in a perpetrator/murderer so that he would voluntarily choose the path of truth and conversion, having understood his guilt. In this way, a conduct with negative an outcome would not necessarily have identical consequences for the perpetrator.

The number of biblical studies dealing with the problem of guilt and punishment consulted by the Author is indeed admirable. The impressive knowledge of the subject allows the scholar to employ justified criticism with regard to authors who are convinced of the necessity to apply a penalty to redress an offence according to the classic idea of justice, i.e. *sum cuique tribuere*. The Author strives to find a genuine paradigm of justice in the selfless gift of love, shown in its fullest and most authentic form in the sacrifice of the Son of God. The main goal of the monograph is to translate this love into concrete legal norms in such a way that the person who has committed evil can understand the nature of his or her misconduct and that the codified law should serve its real rehabilitative purpose, thus mitigating the negative consequences of the offence to an absolute minimum (detention).

In the Author's view, any attempt at perpetrating evil and its materialisation are a negation of the above idea of social justice, which in fact illustrates a personal defeat in the process of self-fulfilment. Also, every forbidden act reflects a kind of relational defeat of the perpetrator, bringing more suffering of others and, paradoxically, alienation of the offender. Eusebi claims that evil in itself turns the perpetrator into a victim thus enlarging the circle of victims. In this way he supplies arguments for the social debate that has been on for some time concerning the methods of sanctioning wilful wrongdoing and the doubtful usefulness of traditional punishments.

Apart from numerous references to divinely inspired texts, Eusebi spins his deliberations of metaphysical and philosophical nature, focusing on the subject of forgiveness, which is a precondition for the realisation of equivalent or competitive models (to the traditional forms of punishment) of justice management. In his argumentation, the Author invokes the doctrine of John Paul II, who on numerous occasions opposed the negative logic of justice (negative consequences triggered by negative actions), calling it purely instinctive action and missing the real culture of forgiveness. The desirable outcome of an alternative applied in this context would be not only a genuine transformation of a criminal but also a real effect exerted on his conviction about his being a threat to the rest of society.

In the reviewer's opinion, the most valuable conclusions are presented by the Author in the sixth chapter of the presented work, in which *inter alia* he conducts an analysis of the teaching of the Catechism of the Catholic Church with respect to the central issue because its appraisal of the notion of punishment is limited and definitely insufficient. The authors of the Catechism restrict themselves to offering laconic and ambiguous remarks focusing on the paradigms of the classic study of criminal law, the latter expressed in such words as "proportionality" and "the redress of damage" but neglecting the important idea of bringing the perpetrator back to the bosom of society. This is also profoundly addressed by Pope Benedict XVI in his *Africae munus*. In the Author's opinion, the Catechism's definition of punishment lacks fundamental references to human dignity in the hypothesis of necessity of repression. Also, Eusebi spares no words of criticism about the argument on the right and obligation of the state to penalise forbidden acts (*ius est et officium ut infligat*) because such a formulation precludes any other kind of punishment inspired by the analogous recreation of *malum* arising as a result of an offence.

Similar criticism is levelled at the current norms of criminal law binding the citizens of the Vatican State. In the opinion of the eminent Author, the insufficient regulation of offences and their prevention has its roots not only in the first penal code of the Italian Republic, which is still in force (Zanardelli's Code of 1889), but is also due to the fact that the primary source of law and its interpretation in the Vatican City is canon law. In this subject, however, there is no mention of the post-conciliar inspiration concerning the application of various models of application of penalties (different from the traditional ones). In the Author's view, the rather insignificant amendments which were introduced to the penal code in response to the teaching of the popes John Paul II and Benedict XVI or the abolition of life sentence and death penalty do not constitute as such any substantial novelty in comparison with the

solutions implemented in secular law; likewise, they do not offer any other strategies of institutional response to the problem of violation of the law and severe disruption of social order, despite being part of the apparatus of this functional state.

An examination of the fourth book of the amended Code of Canon Law of the Latin Church (1983), especially the norm expressed in canon 1314, as the most relevant to our considerations, enables Eusebi to put forward the claim that the penal system of the ecclesiastical legal order neither demonstrates nor implies a retributive response of competent superiors to the breach of codified norms of the law. This direction is confirmed by the Code disposition for the Eastern Churches (1990), which in canon 1401 directly defines the purpose of corrective penalties, providing that “those who have received from Him the power of loosing and binding, are to treat appropriately the illness of those who have committed offences, by correcting, reproving, appealing, constantly teaching and never losing patience, and are even to impose penalties in order to ensure that the wounds inflicted by the offence may receive a cure.” In the Author’s opinion, the two codes, being part of the corpus of norms of the Catholic Church, are the fruit of mature reflection, unlike the solutions used in the Catechism, and this puts them further from the traditional model of *retributive justice*.

The structure of the reviewed monograph is crowned with the last, eighth chapter, where Eusebi outlines the main alternative models of punishment, in accordance with the assumptions communicated in the introduction. The views presented above are based on the theoretical vision of restorative justice and its practical application and as such they call for a thorough reform of the fundamental systemic assumptions adopted earlier and based in a large measure on multiplied evil resulting from the detaining of perpetrators and having no effective rehabilitation programmes. The Author’s personal conviction in this regard derives not only from the years-long experience and practice but also deep conviction that criminal law always serves as the indicator of the quality of national culture/standard of the civilisational development of a particular state, which – in the case of citizens committing offences – is not merely restricted to the deprivation of perpetrators’ freedom for a relatively long time if their guilt has been demonstrated. This subject area affects Christianity in a special way because the central teaching of Christianity is the internal transformation of man as a consequence of the experience of unconditional forgiveness shown by the merciful God. The Author concludes that for the last few years only – at least at the national level of legislation in certain European states – substitute methods of serving a sentence have been advocated, such as a stay in a state-owned rehabilitation facility or a carefully determined fine (in the case of offences causing lesser social harm). Prof. Eusebi is convinced that contemporary criminal law jurisprudence should engage in a valid reflection on the possibility of replacing the firmly established models of using restorative justice, doing away with negative justice which is directly commensurate with the gravity of an offence. Eusebi believes that the effective remedy intended to put the ideas indicated above into practice should be early prevention of crimes; this has a practical application in codified law which, for example, makes it possible to eliminate circumstances and opportunities to commit offences. This obviously calls for a sociopolitical process which requires complete involvement of autho-

rities and citizens. This model can be competitive to the issues mentioned above, especially those concerning the most frequently occurring grave abuses and offences in the economic sector. The Author firmly argues that it will be possible to effect a desirable change only when the vision of punishment has lost its retributive character, becoming a restorative process inspired by the principles of Christian forgiveness and institutional opportunity for a mental change in the life of the offender.

The last reflection concerns the specification of models of justice, commonly termed *restorative justice*, which are best reflected by mediation in criminal proceedings. In its procedural application it is possible that if the committed evil is recognised, the perpetrator may feel the need/necessity for experiencing forgiveness and getting, perhaps yet another time, a chance to mend their ways. The implementation of mediation also entails the possibility of suspending or even abandoning the judicial-litigious path in order to address the controversy on an extrajudicial basis. The Author asserts that mediation – similarly to the biblical *rib* – can be a reliable method of managing evil, a process which does not add to the evil committed by incarcerating a perpetrator because – in its most profound sense – it not only compensates for the harm done but also does not cripple interpersonal relations, in fact enabling their positive growth.

In summary, the presented monograph should be regarded as a valuable and somewhat pioneering contribution to the jurisprudence of criminal law, enriched with intellectual achievements and conclusions arrived at in other disciplines and penetrating studies. The language of the work is very clear, rich and appropriate for the literature of the subject. The index of referenced authors and biblical fragments and the subject index will be great assets for potential researchers, which illustrates the Author's extra efforts to turn the monograph into an efficient tool for finding current solutions in the area of crime and punishment.

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