
CHAPTER 3

RESTORING HUMAN RIGHTS AND DIGNITY IN PRISON – THE CASE OF US MASS INCARCERATION

1. *Mass Incarceration in the USA*

The USA has approximately 5% of the world population. Still, nearly a quarter of the world's prisoners are incarcerated here. The American Bar Association states the following:

The federal prison population has increased nearly 800% since 1980 and more than doubled since 1994, with spending up 1700% over that period, and federal prisons are currently operating at 131% of capacity. This is due in significant degree to the proliferation of mandatory minimum sentences. Nearly half of all federal prisoners are serving sentences for nonviolent drug crimes.¹

The US population consists of about 300 million people. One reason for the increase of prisons was the “state truth-in-sentencing laws” established in the mid-1990s: states could obtain federal funds for building new prisons if they demonstrated that felons who had committed violent crimes served at least 85% of their time. Together with a shift towards privatization, this led to the construction of many prisons since the 1990s.² The underlying US phenomenon has been coined “mass incarceration”, and Tonry’s explanation is only part of the answer why the numbers are so staggering. Another explanation has long been suppressed in the political and public debates: mass incarceration can only be understood in view of the Northern American history of race relations, especially the history of slavery, its abolition after the Civil War, the race segregation that long after its official ending has continued throughout most cities in the USA, and the multilayered structural injustice. Up to today, it affects the majority of African Americans disproportionately, be it with respect to the education system, access to housing, work, and healthcare, or more generally, to economic prosperity. While African Americans are *deprived* of many social and economic rights and fall through the safety net, they are often rendered highly visible and the center of attention when it comes to criminal offenses. *Mass incarceration* stands in stark contrast to the achievements of the civil rights movement of the 1960s; it is a recent phenomenon, emerging in the aftermath of the achievements of the anti-discrimination policies and laws, and it spread throughout all states and the federal prison sys-

1 AMERICAN BAR ASSOCIATION, *Federal Sentencing Reform*, American Bar Association last accessed: June 20, 2019, https://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/criminal_justice_system_improvements/federalsentencingreform/.

2 Michael Tonry has closely analyzed this time period in: M. TONRY, *Sentencing in America 1975-2025*, in: *Crime and Justice* 42/1 (2013), 141–198.

tem. Mass incarceration is more than a criminal justice system: it is a political system that cements unequal treatment and discrimination in a part of society that is hidden from the public and therefore often overlooked; it will certainly not disappear as long as only some more or less cosmetic changes are made to its most egregious elements, while the systemic roots, i. e. racial profiling, racial stigmatization, and structural racism, are not touched.³

Several historical studies, presented over the last years and echoed by the 2014 National Research Council Report,⁴ have pointed to the bone-crushing numbers of the incarceration system in the USA: Between 1970 and 2015, the prison population increased from “some 300,000 people to 2.2 million”. 750,000 people work in the prisons, incarceration costing society \$80 billion annually, while a considerable number of private, for-profit prisons prosper off them. While it is true that crime rates increased during the 1960s and 1970s, they decreased already in the 1990s, including violent crimes.⁵ Yet, incarceration rates did not mirror these trends and climbed without much relation to the crime statistics. The violence in Chicago – where I live – is certainly out of control in parts of the city and some of its suburbs and therefore does not reflect the national trend; rather, it shows the catastrophic effects of a failed policy regarding poor (mostly black) neighborhoods, beginning with urban planning and ending with disregard towards street gangs, which fight against each other in order to control the public space, thereby threatening the overall population. Turning police attention to nonviolent crimes such as drug possession rather than the structural gang violence and organized crime, including drug trafficking, may often initiate a criminal ‘career’ for young African Americans who are caught between the gangs and the police. The mandatory minimum sentence, the three strikes policy (meaning that after the third conviction a person will serve 25 years in prison), and the ‘life without possible parole’ creates a vicious circle. It leaves many African American families, at a certain point of their lives, with the experience of an incarcerated family member.⁶

3 Among others, Bryan Massingale has analyzed how structural racism penetrates the social structures and institutions in the US, including the Catholic Church. Cf. B. MASSINGALE, *Racial Justice and the Catholic Church*, Maryknoll, NY 2010.

4 J. TRAVIS/B. WESTERN/S. REDBURN, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, National Research Council of the National Academies (US) 2014, http://www.nap.edu/download.php?record_id=18613. National Research Council of the National Academies US (For a more thorough analysis cf. H. HAKER, *Sicherheit und Strafsystem*, in: M. BECKA (ed.), *Ethik im Justizvollzug*, Stuttgart 2014, 117–146. Reference to more literature is provided there.

5 M. TONRY, *Sentencing in America 1975-202*.

6 Cf. for an account of growing up in a neighborhood that is well-acquainted with the street violence, but also with racism and police violence: T. COATES, *Between the World and Me*, New York 2015.

Why did the system of mass incarceration emerge in the 1970s? In several explanations, race is *not* considered a decisive factor: David Garland, for example, points to the rise of consumerism due to the development and marketing of automatized and moveable consumer goods (cars, radios and televisions, etc.), together with the changes of cities, but also the changes of security as causes for the emergence of a ‘culture of control’;⁷ Wolfgang Streeck⁸ and others have analyzed this further and contextualize the social transformation of Western societies, from welfare state policies to globalized, neoliberal economies, supported by the (mostly) conservative politics of privatization and, respectively, the outsourcing of the labor market. Last but not least, social scientists have pointed to the rise of the global drug market, and the coming-of-age of the baby boomer generation. All these factors may well have contributed to the rise of the incarceration system – yet, they do not explain US *mass* incarceration.

Michael Tonry identifies three main explanations that scholars have brought forth: first, incarceration responded to the rise of crime rates – but this cannot explain the explosion of incarceration at a time when crime rates were already falling. Second, incarceration was a response to the heightened perceptions of risk and public anxieties. This narrative somewhat echoes Garland and others – but again, it cannot explain why the USA reacted in such an extreme way. Third, late 20th century individualization and decline of welfare politics created an atmosphere of threatened well-being; it created the ground for harsh reactions to those who seemed to take advantage of a system for which others take personal responsibility. This explanation somewhat echoes Streeck’s analysis of the rise of neoliberalism since the 1970s. Again, however, it cannot explain the particularities of the US *mass* incarceration. In contrast to these explanations, Ta-Nehisi Coates, together with Michelle Alexander and many others, see a deliberate politics of racism at work in the USA. They claim that the USA never honestly addressed its own history and never questioned the myth of the “American Dream”, which in fact disguised the inequalities and unequal opportunities for the nonwhite and white American population.⁹ Alexander especially sees the mass incarceration of the 1970s as a continuation and even repetition of segregation policies, known as the “Jim Crow” era of early 20th century, with different means. Indeed, the numbers support this claim. Incarceration has hit the black population disproportionately hard:

7 D. GARLAND, *The Culture of Control. Crime and Social Order in Contemporary Society*, Chicago 2001.

8 W. STREECK, *Gekaufte Zeit. Die vertagte Krise des demokratischen Kapitalismus*, Frankfurt a. M. 2011.

9 M. ALEXANDER, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, New York 2010.

In 2000, one in 10 black males between the ages of 20 and 40 was incarcerated – 10 times the rate of their white peers. In 2010, a third of all black male high-school dropouts between the ages of 20 and 39 were imprisoned, compared with only 13 percent of their white peers.¹⁰

Incarceration is not an exception but a real possibility for many male African-Americans – in Washington, for example, three of four African American males can expect to be incarcerated at one point in their lives. The threat of arrest, incarceration, the life on parole, and the social-political stigma associated with felony becomes part of the black social identity: “Among all black males born since the late 1970s, one in four went to prison by their mid-30s; among those who dropped out of high school, seven in ten did.”¹¹

Those who are imprisoned are, in the vast majority, arrested for non-violent crimes, often for the possession of drugs: for example, in 2012, 1.5 million persons were arrested for non-violent drug offenses; 750,000 of these drugs concerned marijuana, and of these, 90% of the people were arrested for marijuana possession (not dealing or trading). Since the beginning of the so-called War on Drugs under President Nixon, a stunning 31 million citizens have been arrested for drug offenses – 10 percent of the US population.

Changes are coming slowly, and certainly not radical enough in a climate that seems to increase rather than decrease racism. Under the Obama administration, in October 2015, a bipartisan group of Senators introduced a judiciary bill aimed to curtail the problem. It failed but was reintroduced under the Trump administration in 2017 and 2018. It has by now passed US Congress and will – if it will finally be enacted – end the worst elements of the US-American broken justice system at least in the federal prisons.¹² It will not, however, address the root causes. It will not radically transform the criminal justice system. Still, it will at least mitigate some of its most criticized practices, such as ending the mandatory minimum sentences for some nonviolent drug offenders; it will mostly, though not entirely, end juvenile solitary confinement; it will give judges more flexibility in sentencing but not undo the mandatory minimum sentences for violent crimes. It will most likely reduce the number of people held in incarceration – but certainly not end the age of mass incarceration.¹³

10 T. COATES, *The Black Family in the Age of Mass Incarceration*, in: The Atlantic November 24, 2015, <http://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246/>. I have analyzed this in more detail in: H. HACKER, *Sicherheit und Strafsystem*.

11 T. COATES, *The Black Family in the Age of Mass Incarceration*, 18.

12 115th Congress, S. 1917 – 115th Congress: *Sentencing Reform and Corrections Act of 2017*, US Congress Washington June 20, 2019, <https://www.govtrack.us/congress/bills/115/s1917>.

13 One should note that over the last years, migrants have been detained in unprecedented numbers, and many of them are put in for-profit “detention centers”, which are former prisons run by

2. *The Case of Kalief Browder*

In June 2015, the US magazine “New Yorker” published a short article, reporting the death of Kalief Browder whom the author, Jennifer Gonnerman, had featured in a longer article just a year before.¹⁴ Kalief Browder had committed suicide at the age of 22. In 2014, Gonnerman had covered his story, the ordeal of a three-year imprisonment in an infamous jail system called Rikers Island in New York City, consisting of ten jails, eight for men, one for women, and one empty since 2000. Here, Kalief spent his adolescent years from 16 to 20, waiting for a trial he would never get, for a crime he never committed, in a clear but not uncommon breach of his constitutional right to a “speedy and public trial”. While held in one of the buildings with 600 other adolescent boys between the age of 16 and 18, Kalief Browder spent seventeen months in solitary confinement – a practice that with the above-mentioned sentencing and correction reform will not end but only be limited for juvenile offenders. A 2014 official report described Rikers Island as a place with a “deep-seated culture of violence”, both among inmates and between officers and inmates. The authors write in their summary: “We have made the following specific factual determinations:

- force is used against adolescents at an alarming rate and violent inmate-on-inmate fights and assaults are commonplace, resulting in a striking number of serious injuries;
- correction officers resort to “headshots”, or blows to an inmate’s head or facial area, too frequently;
- force is used as punishment or retribution;
- force is used in response to inmates’ verbal altercations with officers;
- use of force by specialized response teams within the jails is particularly brutal;
- correction officers attempt to justify use of force by yelling “stop resisting” even when the adolescent has been completely subdued or was never resisting in the first place; and
- use of force is particularly common in areas without video surveillance cameras.”¹⁵

the same companies as the private prisons. It remains to be seen how this development will change the overall face of mass incarceration in the US.

14 J. GONNERMAN, *Before the Law*, in: The New Yorker September 29, 2014, 26–32, <https://www.newyorker.com/magazine/2014/10/06/before-the-law>. J. GONNERMAN, *Kalief Browder, 1993-2015*, in: The New Yorker June 7, 2015, <https://www.newyorker.com/news/news-desk/kalief-browder-1993-2015>.

15 U.S. DEPARTMENT OF JUSTICE UNITED STATES ATTORNEY SOUTHERN DISTRICT OF NEW YORK, *CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island*, 2014, <https://www.documentcloud.org/documents/1252688-sdny-rikers-report.html>. Rikers Island has since been overhauled and is set to be closed over the next few years.

Kalief Browder faced many legal and human rights' violations, beginning with the violation of his legal "right to a speedy and public trial," and ending with the injuries to his body and soul. The disciplinary practices are clearly humiliating: for example, inmates had to wash their clothes by hands; they slept in an open room with a plastic bucket to store their personal belongings, in reach for the gang leaders who used them as a means to demonstrate their power over other inmates. Kalief Browder observed other inmates being injured and was repeatedly involved in fights himself. Officers would threaten him and other inmates not to seek medical treatment after such fights; in court hearings, prosecutors tried to convince him to plead guilty. During solitary confinement, he could continue his education, but often, his daily work would not be collected. He lost considerable weight because the food rations were not sufficient for a teenager so that he told Gonnerman he began begging for food; and he was verbally and physically abused by officers, for which Gonnerman obtained video evidence only after her initial reporting. After almost two years of his imprisonment, Kalief tried to commit suicide for the first time; he was found, taken to the clinic, and then returned to solitary confinement. Within weeks, he attempted again to take his life, and again survived. A year later, with a new judge in place, his case was suddenly dismissed, because the plaintiff had disappeared and the prosecutor could not uphold the charges against Kalief. He was released in the summer of 2013, clearly traumatized and mentally injured, but left with no help other than from an attorney and his family. His next suicide attempt came in November 2013, and he was taken to a psychiatric clinic. Despite all these odds, he passed his high school exam and started to go to a community college. After the *New Yorker* article appeared in June 2014, a donor volunteered to pay for his tuition, and Kalief Browder gave several other interviews after his case had caught quite some public attention. However, at the turn of the year 2015, he had another breakdown and was again taken into a psychiatric clinic, only to be released after two weeks. In June 2015, he committed suicide.

If not the injustice of the wrong accusation, if not the abuse by other inmates and officers (documented in a video that Gonnerman made public with the consent of Kalief Browder), if not the repeated delay and postponement of his trial, it must have been the solitary confinement, many argue, that might have taken Kalief Browder down. Solitary confinement is a severe human rights violation, and yet, it is commonly practiced in the US incarceration system, even in juvenile prisons. The *Vera Institute for Justice* estimates that about 80,000 people are held in solitary confinement on any given day. In Rikers Island, the *Washington Post* reported in 2015, often one quarter of the more than 600 juveniles would be held in

solitary confinement.¹⁶ Craig Haney, a psychologist, describes the impact in the following words:

The emptiness and idleness that pervade most solitary confinement units are profound and enveloping. The prison typically provides the prisoners in these units with literally nothing meaningful to do. That emptiness, when combined with the total lack of meaningful social contact, has led some prisoners into a profound level of what might be called “ontological insecurity” – they are not sure that they exist and, if they do, exactly who they are.¹⁷

Cases like Kalief Browder’s shed some light on the US prison life. They demonstrate that human rights and dignity are empty terms and are violated on an everyday basis in the shadow of a society that takes no interest in its history, its impact on the present systems, including the criminal justice system, and society’s overall structural injustice.

3. *Human Dignity and Human Rights – A Contradiction in the Criminal Justice System?*

Any criminal justice system is supposed to be a response to crimes, though it is not clear how effective punishment really is. Michael Tonry focuses his review of the last fifty years of US criminal justice policies in part on the underlying conceptions of justice. In sum, they can be identified in the following way: the 19th century *consequentialist* model was centered on minimization of (social) harm while also limiting what could justly be done to offenders. In the 20th century, several other models were explored, for example the correction-centered model of *rehabilitation*, the utilitarian, proportional and *retributive* justice model (which Tonry sees to be focused on the retribution of harm done to victims, not retaliation against the perpetrators), or the preventive *deterrence* model. This latter model dominated the policies from the mid-1980s until the mid-1990s, the time of sentence reforms and restrictive anti-drug laws. According to Tonry, there is no *justice* model today that would guide the practices of incarceration; rather, the models applied seem to have returned to the premodern understanding of “mere” punishment: they “take no or reduced account of considerations relating to just treatment of offenders”¹⁸. Tonry comes to a dire conclusion:

Committing an offense, particularly a seriously violent or sexual offense, in effect makes offenders into outlaws whose interests do not matter. [...] they are seen primarily as social threats and not as people whose interests deserve the concern and respect that traditional retributive and consequentialist theories of punishment would give them.¹⁹

16 M. BERMAN, *Kalief Browder and What We Do and Don’t Know about Solitary Confinement in The U.S.*, in: Washington Post June 9, 2015, <https://www.washingtonpost.com/news/post-nation/wp/2015/06/09/kalief-browder-and-what-we-do-and-dont-know-about-solitary-confinement-in-the-u-s/>.

17 C. HANEY, *Statement before the Senate Judiciary Committee*, 2012, quoted in *ibid*.

18 M. TONRY, *Sentencing in America 1975-2025*, 36.

19 *Ibid*. 35.

Tonry asserts that the US system mirrors the description of pre-modern practices of punishment, which Michel Foucault had described in his study on the origins of the modern prison system.²⁰ If this is the case, it not only supports Alexander's and Coates' thesis that in the USA, mass incarceration is the "new Jim Crow", the form that structural and politically sanctioned racism has taken, it also strikingly contradicts (and violates) the normative framework that was put in place seventy years ago by the United Nations. To be sure, it is not an immediate legal framework – this it only becomes by ratification and implementation into national law. First and foremost, the human rights framework is a normative-ethical framework, serving as political foundation and framework for a political ethics. As such, it is interesting for the approach I am pursuing, albeit without the necessary corrections that I take from critical theory.²¹

The underlying moral concept of justice that the United Nations envisioned after World War II breaks in an important way with the Hobbesian political theory that is based on (national) sovereignty, often spelled out as power over citizens rather than the power of citizens.²² The common critique that the human rights framework is flawed because almost all of the countries who ratified the *Human Rights Declaration* continue to violate the very rights they promised to secure, is right and wrong at the same time: it is correct that human rights are in fact violated in many countries, rendering their realization aspirational rather than the implemented normative order. The acknowledgment of the clash between facticity and normativity is certainly frustrating, but the human rights framework provides criteria for the immanent critique of social values, norms, and institutions. Importantly, the UN places individual human rights and the dignity of any human at the center of state policies, directing states' actions towards securing these rights. Though often regarded as a continuation of some liberal political theories, Linda Hogan has shown convincingly that the human rights regime established in the United Nations Human Rights Declaration is neither liberal nor based on Western values alone.²³ It does, however, contrast with those theories that prioritize the community rights or interests (including national security interests) over

20 Tonry would most probably agree with this conclusion, because he asserts that the US system mirrors the description of pre-modern practices of punishment, which Michel Foucault had described in his M. FOUCAULT, *Discipline and Punish: the Birth of the Prison*, New York 1975.

21 Cf. chapter 1 and Part Three in this volume.

22 Conor Gearty has analyzed the history of political theory in light of human rights and democracy. C. GEARTY, *Liberty and Security*, Cambridge 2013. Cf. for an analysis H. HAKER, *Sicherheit und Strafsystem*.

23 L. HOGAN, *Keeping Faith with Human Rights*, Washington 2015.

the rights of the individual.²⁴ With the primacy of rights of individuals, it gives justice theories and political deliberations a direction: human rights are meant to secure life conditions for individuals *to live a life in dignity*. These conditions range from the requirement of food, housing, or work to basic freedoms and the chance to participate in social and political affairs. Neither the concept of merit-based justice (underlying the ‘American Dream’ that Coates calls the “Dream of the Whites”)²⁵ nor the judiciary understanding of justice as penance for a crime reflects this prioritization of the individual’s dignity promoted in the human rights regime.

Criminal justice is one element of a broader and complex understanding of justice. It is important to note that the concept of justice applied in criminal justice differs both from *commutative justice*, which is based on fair exchange and social, reciprocal cooperation in symmetric relations, often designed as contractual relations, and from *distributive justice*, which has often been at the center of justice deliberations. The distinction between the different elements of justice are often overlooked in theories of justice, instead focusing on distributive justice as the responsibility of the state. For example, one of the most important theorists of justice of the second half of the 20th century, John Rawls, focused mostly on distributive justice. It is important, however, to understand how justice theories relate to criminal justice systems, because otherwise the structural injustice that precede the punishments for the transgressions of the law are left unexamined. Rawls introduced two major principles of justice, which have become the basis for most discussions (affirmative or critical) of justice in political philosophy. First, the principle of equality states: “each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others”. Rawls complemented this principle of equality with the principle of difference: “social and economic inequalities are to be arranged so that they are to be of the greatest benefit of the least-advantaged members of society”.²⁶ With these two principles Rawls

24 For a theoretical, ethical account of human rights cf. A. GEWIRTH, *Human Rights: Essays on Justification and Applications*, Chicago 1982.

25 T. COATES, *Between the World and Me*.

26 J. RAWLS, *A Theory of Justice*, Cambridge, Mass. 1999 (orig. 1970). Revised Edition from the original of 1971. Further modifications are made in *Political Liberalism*, where it reads as following: “Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal basic liberties, and only those liberties, are to be guaranteed their fair value.” The difference principle now reads: “Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society.” J. RAWLS, *Political Liberalism*, New York 1993, 5 f.

tried to close the gap between normative equality and factual inequity. Rather than following the strict reciprocity of equal partners, the difference principle was meant to compensate for the structural injustices or unequal starting points, unequal chances to flourish and/or pursue the life in dignity among citizens of a given society. Rawls, however, never considered the underlying racism of the US societies. The gap between the normative principle of dignity that rests upon the equality of each individual and the factual structural inequity between persons who may differ in many respects, i.e. social, cultural, ethnical, or religious backgrounds, is perhaps the most important reason why reflections on justice in relation to criminal law are necessary in the first place.

The justice concept applied in criminal justice theories was long centered on *retributive justice* and, to a lesser degree, on *restorative justice*, i. e. some kind of repairing of the harm done to the victims of a person's acts. The human rights approach goes beyond retributive justice, if this is understood as procedural fairness and a kind of 'pay back' between actors. The interpretation Tonry gives of retributive justice, for example, ignores the history of inequality and discrimination preceding the act of crime, as is the case in US mass incarceration. Furthermore, it may conceal the persisting structural inequality that may be mirrored in a criminal justice system – such as the disproportional arrests of one social group or disproportionate sentencing, including the sentencing to the death penalty. The judiciary system is in place in order to hold persons accountable for their actions. Whether imprisonment is in fact legitimate and/or an appropriate response to crime has been the topic throughout the history of criminal justice, but I will leave this discussion aside here. The human rights framework deals with the *reality* of imprisonment, and it connects it to the overall normative standards of human rights and dignity.

When the criminal justice system is disconnected from the social contexts and the structural injustices that shape them, individuals who are faced with incarceration may easily lose their moral status: in addition to being misrecognized and stigmatized already socially, they often lose the protection of their basic human rights. Social stigmatization is a fact that often precedes the injustice experienced in the criminal justice system: for example, some of the neighborhoods in Chicago are almost broken down with regard to the social structures. Far too many households live in poverty; basic services such as healthcare, housing, food security, schools, or community services are insufficient to respond to the crises; due to gang activities, unemployment, violence, and incarceration rates which together hit young men especially hard. Families are at risk to break down. The number of high school dropouts is far too high and, last but not least, the insecurity in the homes and the neighborhoods creates an atmosphere of hopelessness

and frustration with public institutions. The task for any theory – and ethics – of criminal justice is therefore to spell out the connection between social injustice and mass incarceration. Furthermore, it must show how the moral claim of equality, based upon the dignity of every human being, translates into social policies that ameliorate the structural injustice, how rights can be upheld during the time of incarceration, and how felons can be re-integrated (or integrated for the first time) into society after their release from prison.

The disconnect between the theory of justice of contemporary Western political philosophy that is mostly interested in foundational questions or distributive justice,²⁷ on the one hand, and the theory of penance underlying the recent phenomenon of mass incarceration, on the other hand, may explain that political theory has had not much influence on reforms of the criminal justice system. The US judiciary system increases rather than closes the gap between the normative expectation of dignity and equality and factual inequity and unequal treatment. Here are some selected passages from many more requirements that the UN states in its 2005 “Human Rights and Prisons” Pocketbook:

All human beings are born free and equal in dignity and rights.

All persons deprived of their liberty shall be treated at all times with humanity and with respect for the inherent dignity of the human person.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. There are no exceptions. ...

Ill-treatment is defined as other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture. ...

All persons deprived of their liberty shall have the right to an adequate standard of living, including adequate food, drinking water, accommodation, clothing and bedding.

There shall be facilities for keeping clothing clean and in proper condition. Prisoners and all detained persons have the right to the highest attainable standard of physical and mental health.

Prisons should be safe environments for all who live and work in them, in other words for prisoners and staff, and for visitors.

No one in a prison should fear for his or her physical safety.

All cruel, inhuman or degrading punishments are completely prohibited, including corporal punishment or placing in a dark cell.

Punishment by close confinement or reduction of diet shall never be inflicted unless the prisoner is certified by the medical officer as medically fit to sustain it.

27 Cf. as an example for the transformation of the theory of justice into the obligation to justify one's claims in R. FORST, *The Right to Justification: Elements of a Constructivist Theory of Justice*, New York 2012. For an overview of historical approaches cf. D. JOHNSTON, *A Brief History of Justice*, Chichester, West Sussex/Malden, MA 2011.

The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.

Anyone who is arrested has the right to trial within a reasonable time or to release.²⁸

These demands, directly following the interpretation of human dignity and rights, applied to prisons, demonstrate how far the actual practices of the US criminal justice system are from a truly just system. However, it is not only the USA that misses the mark. In an overview study on juvenile justice, for example, John Muncie has presented a comparative study that includes multiple countries. He refers to other analyzes that demonstrate that the prison population has increased in many countries.²⁹ Yet, Muncie cautions to use the term “globalization of criminal justice”, as was the case in the early 2000s. Rather, he sees a heterogeneous landscape and pushback to the US system that is the outlier in many ways – even though it is seen as a trendsetter by many.

4. *Wounded Dignity and Recognition*

Looking back at a debate he had with US political philosopher Nancy Fraser on an adequate response to injustice, Axel Honneth defended the merit of recognition theory over against a justice theory that is centered on distributive justice. While Fraser accused proponents of recognition theory to withdraw to cultural debates when socio-economic analyzes are warranted, Honneth rejects her dismissal of the importance of recognition as missing the point. Fraser underestimates, Honneth holds, the increased moral sensitivity for injustice that is reflected in the concern for recognition:

Two alternative interpretations, which in a certain manner take opposing observations as their point of departure, today offer themselves as an explanation of [the] change in normative orientations. On the one hand, the turn to concepts like ‘dignity’ or ‘recognition’ can be grasped as the result of political disillusionment that set in the moment the prospects of extending social equality began to disappear with the international triumphal march of conservative parties and the dismantling of welfare-state programs. The thesis would be, namely, that no sooner were the demands for economic redistribution seen to be unrealizable in

28 OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *Human Rights and Prisons: A Pocketbook of International Human Rights Standards for Prison Officials*, 2005, <http://www.ohchr.org/Documents/Publications/training11Add3en.pdf>. These standards are based upon multiple documents, but grounded in the specific resolution concerning the treatments of prisoners, adopted by the UN General Assembly in 1990, UNITED NATIONS GENERAL ASSEMBLY RESOLUTION 45/111, *Basic Principles for the Treatment of Prisoners*, UN 1990, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/BasicPrinciplesTreatmentOfPrisoners.aspx>.

29 J. MUNCIE, *The Globalization of Crime Control – The Case of Youth and Juvenile Justice: Neo-Liberalism, Policy Convergence and International Conventions*, in: *Theoretical Criminology* 9/1 (2005), 35–64, 40.

the long term than the reduced, merely negative notions of eliminating humiliation and disrespect prevailed instead. On the other hand, however, an explanation can be imagined that grasps the increasing orientation towards such ideas not as the result of political disillusionment but, conversely, as a consequence of increased moral sensibility. This second thesis would be that, having become aware of the political status of the experience of social or cultural disrespect through a series of social movements, *we have in the meantime become conscious of the fact that the recognition of human dignity comprises a central principle of social justice.*³⁰

The theory of recognition that has emerged over the last decades may be insufficient, as Fraser holds, to adequately capture the requirements of distributive justice. It is, however, central for criminal justice, as I will show. I see advantages of recognition theory especially in the link that it creates between the human dignity and rights framework and justice. For a political ethics in the Christian tradition, this is important, too: *first*, it provides an important interpretation of human dignity beyond the natural law tradition that rests upon metaphysical premises that are hard to justify.³¹ *Second*, it may inform the overall conceptualization of justice theories that otherwise have a too narrow focus on the distribution (or redistribution) of goods.³² If criminal justice is narrowed to retribution as political-legal response to crimes, it not only ignores the preceding social injustices (that may be captured in justice theories of redistribution) but also the violations of dignity and rights with its damaging effects on people's identity. Axel Honneth, one of the most prominent scholars of recognition, has reinterpreted Hegel's theory of recognition as foundation of any social philosophy. This reinterpretation is in part indebted to psychological and social theories, in part to political theory, and in part to moral philosophy. These intersections are attractive for my approach, but they also create some problems, especially for the foundation of moral claims which I will leave aside here.³³ Honneth's recognition theory is spelled out with view on experiences of intersubjective recognition and/or misrecognition. Honneth's debt to critical theory is his turn to negative experiences: the task of social philosophy is then to analyze dignity and recognition indirectly, turning to the structures of *injustice* in view of *misrecognition*, namely as personal disrespect, social discrimination, and denial of political rights. In Hon-

30 A. HONNETH, *Recognition and Justice*, in: *Acta Sociologica* 47/4 (2004), 351–364, 352. (My emphasis).

31 Cf. chapter 2 and 6 in this volume for a discussion of Natural Law and Catholic theology, and Arendt's critique of natural rights that fall short of political rights, in chapter 1 in this volume.

32 Cf. for a debate on this issue: N. FRASER/A. HONNETH, *Redistribution or Recognition? A Political-Philosophical Exchange*, London/New York 2003.

33 For a more thorough analysis cf. chapter 5 in this volume. For a critique of Honneth, cf. H. NAGL-DOCKAL, *Innere Freiheit: Grenzen der nachmetaphysischen Moralkonzeptionen*, Berlin 2014.

neth's view, through such analyzes we may gain insight or an "approximation" of dignity by "determining what forms personal insult and disrespect take"³⁴. Over against political theories that mostly address questions of institutional justice, Honneth claims that a comprehensive theory of justice must address 'recognitive' practices of care and solidarity in addition to the political-legal recognition.³⁵

I can follow Honneth in his insistence that recognition is important not only for one's personal and social identity but also as a political right that constitutes equal political and legal standing. Faced with misrecognition and violations of rights, he observes (in Marxian fashion) that those who suffer from misrecognition are motivated to 'struggle for recognition'. Hence, the establishment of a (more) just order is left mostly to those affected most by injustice; whether it is successful or not depends on the strength of the movement and solidarity *among* those who suffer. This may suffice for a social theory that analyzes, mostly descriptively, social movements and social changes, but it misses the *ethical* point of the connection between misrecognition and justice. Here, a more specific ethical assessment of the obligations required by any moral agent and by the institutions in question is warranted. In the context of prison work, however, creating conditions that allow for experiences of recognition faces particular challenges. Inmates face multiple restraints and constraints in their public and/or political expression that otherwise accompany struggles for recognition – often, radical measures such as hunger strikes are desperate attempts to call for attention to the prison conditions from the outside world. Hence, the concept of solidarity, otherwise the motor of struggles for recognition, needs to be complemented by the advocacy *for* those who are incarcerated. The ethical attention to misrecognition, and advocacy for recognition, I want to argue, is neither identical with the struggle for recognition of those who are misrecognized or disrespected, nor can it be reduced to the *political* provisions of the legal system of justice, especially not to the provisions of criminal justice.

However, why is the link, or rather, the reinterpretation of dignity as an *interpersonal* concept over against alternative interpretations of dignity such as the

34 A. HONNETH, *Integrity and Disrespect. Principles of a Conception of Morality Based on the Theory of Recognition*, in: *Political Theory* 20/2 (1992), 187–201, 188. I disagree with Honneth's insistence on progress, but I will not discuss this here. For a critique cf. A. ALLEN, *The End of Progress*, New York 2016.

35 A. HONNETH, *The Struggle for Recognition: The Moral Grammar of Social Conflicts*, Cambridge, UK/Oxford; Cambridge, MA 1995. Cf. also A. HONNETH, *Freedom's Right. The Social Foundations of Democratic Life*, New York 2014. Here, he takes the Hegelian concept as the starting point for a theory of freedom that is not just a variant of a political-liberal theory but rather an alternative interpretation, based on the theory of recognition.

natural law concept of dignity warranted?³⁶ One shortcoming of the Natural Law theory is its inability to account for the constitutive role social norms play for the development of personal identity.

While theology emphasizes the relational nature of identity by way of the theology of creation, it underestimates the role of social recognition. When dignity is not tightly linked to human rights and – as important – to the experiences of disrespect, humiliation, stigmatization, and discrimination, it easily becomes an abstract principle that is understood as an endowment granted with the status as human being created by God, disregarding the indignity of a person's social status. Furthermore, the often-repeated focus on personal morality and responsibility overlooks the multiple structural roots of injustices. Catholic theology may agree with recognition theorists who emphasize that recognition is an important condition of a person's well-being, emerging first in the personal care and love in the psychological self-development. However, apart from personal self-development, it is a person's social identity as well as his/her legal status as subject of (legal) rights that is captured by the concept of recognition. Without the personal and affective care and love by others, self-esteem is inhibited; without the social affirmation, the positive sense of social identity that constitutes one's sense of belonging in a community cannot thrive; and without the respect in the political sphere that guarantees equal rights, one's moral standing is impaired.³⁷ Hence, a person's individual, social, and political identity is tightly linked to the threefold concept of recognition as self-esteem, self-respect, and sense of (social) belonging. A person – or group – who is stigmatized as *other* because of a group characteristic is degraded and at risk to be excluded from multiple social practices that constitute social cohesion. A person who is rendered lawless within the political sphere loses his/her status as citizen or, as Hannah Arendt said: without the right to have rights, the status of citizenship is impossible to maintain and cannot be practiced.³⁸ Taking these layers into account and connecting them to the human rights framework, Arndt Pollmann is right suggesting to conceptualize dignity as a precarious capability, its realization being dependent on others in variable de-

36 I have analyzed the concept of dignity in greater length in: H. HAKER, *Die Würde des Menschen ist antastbar*, in: L. HALBHUBER-GASSNER/W. NICKOLAI/C. WICHMANN (ed.), *Achten statt ächten in Straffälligenhilfe und Kriminalpolitik*, Freiburg i. Br. 2010, 29–44.

37 One can, of course, question the destructive force of misrecognition on all levels and stress the fact that human beings may be more resilient to disrespect, shaming, and lawlessness. But as I have said above, Honneth uses the negative experiences as an indirect strategy to 'approximate' what is meant by the concept of dignity, not as a demonstration that everyone is necessarily affected similarly by acts or practices of misrecognition.

38 H. ARENDT, *The Origins of Totalitarianism*, New York 1968. Cf. chapter 1 in this volume for a closer analysis.

gresses throughout the life of a human being.³⁹ Because dignity is precarious, it requires measures of protection and promotion, spelled out as human rights.⁴⁰ Dignity is therefore the purpose of the human rights framework, which aims at ensuring that every human being is enabled to live his or her life in dignity.

The focus on recognition brings to the forefront what is otherwise easily overlooked in discussions of criminal justice: if prisoners are denied recognition, their (temporary) exclusion from societal life not only becomes a social exclusion but also a lack or loss of moral standing. Furthermore, this exclusion entails a political-ethical degradation that contradicts the first and basic principle of the human rights framework, which is based exactly upon the normative claim that human dignity is inviolable, as the UN Resolution on the rights of prisoners unequivocally states: “All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.”⁴¹ In the context of prison systems, violations of personal recognition include physical and psychological violence such as beatings or sexual abuse; violations of social recognition include the stigmatization and disciplining of everyday practices within prisons; violations of political recognition, identical with rights, include multiple constraints on political participation, such as the denial (or suppression) of the right to vote, which is a common practice for most US prisoners.

While political rights have often been the focus of 20th century political philosophy, recognition theory has shown the connection of political recognition with the other two types, social and personal recognition. Now we can see how the US system not only *mirrors* the overall existing social structures of injustice and misrecognition rooted in the racist histories but also *exacerbates* them: when arrests are perceived as arbitrary or based on racial profiling, when rights are denied with respect to trials, when potentially innocent people, including juveniles, are lured into guilty pleas with the threat of an especially harsh sentence if they insisted on a trial, and when life in prison entails a “culture of violence”, as the Rikers Prison report stated, all these practices increase rather than decrease the sense of lawlessness. They discourage any trust in a just criminal justice system. Prison officers and all persons working with prisoners play a crucial role in shaping the experiences during the time of incarceration, because they represent the world outside the prison. In their interactions with the prisoners, they represent the so-

39 In chapter 5 in this volume, I elaborate further on the interpretation of human dignity in light of vulnerable agency.

40 Cf. A. POLLMANN, *Embodied Self-Respect and the Fragility of Human Dignity: A Human Rights Approach*, in: P. KAUFMANN/H. KUCH/CH. NEUHÄUSER/E. WEBSTER (ed.), *Humiliation, Degradation, Dehumanization*, Dordrecht et al. 2011, 243–261.

41 UNITED NATIONS GENERAL ASSEMBLY RESOLUTION 45/111, 1990.

cial values of the society to which prisoners are supposed to return and which they are supposed to embrace. When prison officers and/or workers abuse their power to increase rather than decrease the asymmetry between themselves and the prisoners, and when they engage in disciplinary actions and implement rules as means to domination, misrecognition becomes structural.

In the USA, social policies committed to the human rights framework would need to attend to the history of racism, segregation and urban planning and strive to secure the life-conditions in crisis neighborhoods in order to raise them to the same level as elsewhere in the city. This requires, as Nancy Fraser and others rightly point out, the implementation of distributive justice concepts, including redistribution and reparations for past injustices. With respect to criminal justice, policies would not rely on a theory of retributive justice alone, because it conceals the underlying systemic injustice. According to the human rights framework, prisons should be spaces of accountability for crimes, acknowledging the *agency* of persons who need to be held responsible for harms they have inflicted upon others, and laws they have violated, while at the same time acknowledging their rights. And here, the indirect or negative approach to dignity, through the concept of misrecognition, stigmatization, and discrimination is of utmost importance, because it relates the normative ethical concept to a person's sense of self: if misrecognition is the dominant experience of prisoners, how can we expect them to transform their self-identity and, furthermore, how can we expect them to develop a positive social identity? How can we expect them to abide by the laws if they are rendered lawless by the very system that claims to be just? If the experience of justice is such that the state has the power to decide who is respected while inmates continuously experience personal, social, and political disrespect and misrecognition, how can we expect them to trust the criminal justice system – and moreover, how can we expect any transformation to happen?⁴²

42 Cf. for a close analysis of the resocialization and an ethics of criminal justice: M. BECKA (ed.), *Ethik im Justizvollzug: Aufgaben, Chancen, Grenzen*, Stuttgart 2014.

5. *Restorative Justice and Criminal Justice*

5.1 THE UNITED STATES CONFERENCE OF CATHOLIC BISHOPS:

STATEMENT ON CRIME AND CRIMINAL JUSTICE

In 2000, the United States Conference of Catholic Bishops issued a statement, which they called “Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice”⁴³. They start with a diagnosis that echoes the analysis I have alluded to in the previous part:

It is time for a new national dialogue on crime and corrections, justice and mercy, responsibility and treatment. As Catholics, we need to ask the following: How can we restore our respect for law and life? How can we protect and rebuild communities, confront crime without vengeance, and defend life without taking life?⁴⁴

And a little later they state:

A Catholic approach begins with the recognition that the dignity of the human person applies to both victim and offender. As bishops, we believe that the current trend of more prisons and more executions, with too little education and drug treatment, does not truly reflect Christian values and will not really leave our communities safer. We are convinced that our tradition and our faith offer better alternatives that can hold offenders accountable and challenge them to change their lives; reach out to victims and reject vengeance; restore a sense of community and resist the violence that has engulfed so much of our culture [...] All those whom we consulted seemed to agree on one thing: the status quo is not really working – victims are often ignored, offenders are often not rehabilitated, and many communities have lost their sense of security. All of these committed people spoke with a sense of passion and urgency that the system is broken in many ways. We share their concern and believe that it does not live up to the best of our nation’s values and falls short of our religious principles.⁴⁵

After offering an analysis that emphasizes not only the disproportional incarceration rates of African Americans but also those of Hispanic and Native American minorities, pointing especially to the detention of immigrants in prisons, sometimes together with felons, the Bishops plead to shift the interpretation of justice: they propose to apply the concept of *restorative* justice, replacing what they consider to be the prevalent *retributive* justice concept:

Restorative justice focuses first on the victim and the community harmed by the crime, rather than on the dominant state-against-the-perpetrator model. This shift in focus affirms the hurt and loss of the victim, as well as the harm and fear of the community, and insists that offenders come to grips with the consequences of their actions. These approaches are not “soft on crime” because they specifically call the offender to face victims and the communities. This experience offers victims a much greater sense of peace and account-

43 UNITED STATES CATHOLIC CONFERENCE OF BISHOPS, *Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice*, 2000, <http://www.usccb.org/issues-and-action/human-life-and-dignity/criminal-justice-restorative-justice/index.cfm>.

44 Ibid. 3.

45 Ibid.

ability. Offenders who are willing to face the human consequences of their actions are more ready to accept responsibility, make reparations, and rebuild their lives.⁴⁶

The statement emphasizes that restorative justice is in line with the principles of Catholic Social Teaching but stresses more than the current criminal justice system the possibility to repair the damage done to victims and/or to the community, and the possibility of transformation or even “conversion”. This approach underscores that personal identity (taking responsibility for one’s actions), moral and religious identity (the premise of the right to live a life in dignity, and granting moral agency to every person), and social identity (the acknowledgment that persons are part of a community that itself has a responsibility to give offenders the chance to restore their relationship with others) must be seen together. At the end of the statement, the Bishops repeat their demand to end the death penalty, which they see in contradiction to the Catholic ethics of life.⁴⁷

As much as the shift towards restorative justice is welcome as one element of a necessary path forward, it emphasizes the personal transformation of the felon without adequately addressing the prevalent structural injustices as background of the criminal justice system. Since US mass incarceration is affecting black persons disproportionately, *any* theory of social and/or political ethics, however, must first attend to the structural injustices caused by the history of racism and the unwillingness of the US society to deal with it, and the effect of this history on the self-understanding of those who are the victims of unequal treatment, and social shaming. The latter is, for example, the case when crime is associated with *character* traits of a given social group, which is to explain why certain individuals belonging to this group are at a greater risk to commit crimes. Such responsabilization is communicated often in US media documentaries of crimes, and it is widely used in the USA. However, the exclusive personal ascription of responsibility does not only concern criminal offenders; it is also ascribed to people and groups who rely on social service programs for reasons of poverty, and it was used in the major reforms of social policies during the 1990s. Focusing primarily on the responsibility of individuals shifts the burden for social shortcomings and social failure to the individuals; those who have suffered most from failed policies and

46 Ibid. 23.

47 I have (critically) analyzed the document in greater length in: H. HAKER, *Sicherheit und Strafsystem*. The interrelation between the personal, moral, and social identity is already my extrapolation and constructive interpretation of the document, present in nascence but not fully developed there. The USCCB statement is, in my view, still ambivalent in its analysis of the relation of the restoration of the social order, and the emphasis on the communal restoration between an individual and the community may be illusionary unless the underlying structural social injustices prevailing within the communities (and societies by and large) are also addressed.

social divisions are then told that they do not make enough effort, are not motivated enough, and would rather rely on social programs than lifting themselves up, etc.⁴⁸ Hence, restorative justice concepts must avoid falling into this trap of responsabilization. Rather, they should be used to connect social restoration – namely, the restoration of the relationships between the parties involved – with individual restoration that *then*, but only then, is certainly welcome as an element of justice to be applied, among other areas, in the criminal justice system.⁴⁹

If we consider the relationship between personal, moral, and social identity as I have alluded to with reference to recognition theory, we can better understand how justice could indeed be realized within the prison system: it would require experiences of personal affirmation, political rights such as the right to public free speech without fear of retaliation, or the right to vote, and the creation or fostering of a community in which a new social identity can be shaped, for example in education, work, or projects that inmates may suggest and engage in themselves.⁵⁰ Without being directed by the Human Rights Framework that spells out very concretely the rights and obligations of prisoners and those who work in prisons, justice within the criminal justice system is impossible. A thorough analysis of current affairs in all stages, from arrests, sentencing, prison life, and parole reveals that the US criminal justice system is not only broken as a political system but, as the USCCB has correctly stated, it is also broken in moral terms.

5.2 CHRISTIAN ETHICS AND THE ROLE OF PRISON CHAPLAINS

In Christian theology, dignity is based upon the recognition of every human being as made in the image of God, and hence, religious identity entails a specific self-understanding. Christians seek comfort in God's unconditional presence, when they fail and harm others as well as when they are failed and/or harmed by others, when they are rendered outcasts, or are denied their political rights. Moral

48 Cf. I. M. YOUNG, *Responsibility for Justice*, Oxford/New York 2011. Young shows how during the presidency of Bill Clinton this individualization of responsibility became an important pillar of the social programs, for example, to fight poverty. Rather than empowering persons and fostering their individual, social, and moral agency, however, the personalization of responsibility rested almost entirely upon a merit-based justice concept. Coates' book demonstrates how the "Dream" is considered a notion of and for white people and not even desirable from his perspective, because it does not account for the relational and social dimensions of agency. Cf. for the background analysis also M. ALEXANDER, *The New Jim Crow*.

49 For a comparison of several overlapping elements and models used in the criminal justice systems in different countries cf. J. MUNCIE, *The Globalization of Crime Control*.

50 M. BECKA, *Strafe und Resozialisierung. Hinführung zu einer Ethik des Justizvollzugs*, Münster 2016. In this work, Becka analyzes in great detail how this reinterpretation of identity can be conceptualized and put in practice.

actions are responses to others, and through that, they are regarded as responses to God's demand to care for one another.⁵¹ In the context of prison work, moral actions require working for the transformation of injustice into justice, the transformation of misrecognition into recognition and respect, and the transformation of social exclusion into practices of inclusion and participation, as constrained as they may be in the context of prisons. As everyone would agree, it is first and foremost the victims especially of violent crimes who must be addressed with compassion. However, while the victims are – correctly – addressed with sympathy, offenders are often – understandably – met with anger and outrage. In the context of prisons, however, the prisoners themselves become the challenge for the responsible response.

Attending to their stories and experiences, addressing them, too, as vulnerable, finite, fallible, and capable agents is a moral demand that needs to be put in practice on an everyday basis. The human rights framework aims at overcoming the fear, the outrage, and the thirst for revenge, challenging these emotions into a just, *responsible* response. The human rights framework spells out the standards of *justice* that any criminal justice system must adhere to – and therefore it is of utmost importance to acknowledge a system that does not go beyond the mere penance of the offenders of laws. Michelle Alexander therefore rightly states: “We can have no significant understanding of any culture unless we also know the silences that were institutionally created and guaranteed along with it.”⁵²

Sometimes, the distinction between the victim and the perpetrator is blurred. At other times, innocent people are treated as criminals as was the case with Kalief Browder, or people are sentenced with no adherence to proportional justice. Too often, in the US criminal justice system, prisoners' rights are violated. However, it is the task – and the challenge – of those who respond to their crimes – police officers, prosecutors, attorneys, judges, prison officers and everyone interacting with prisoners within a prison culture – to counter any threat or experience of misrecognition with the effort to enable experiences of recognition. This does not exclude but, to the contrary, includes the respect of prisoners' agency, and the advocacy for restorative justice: crime offenders must indeed be held accountable for the crimes they have committed. Fair trials, fair sentencing, and fair treatment

51 For a Jewish ethics of responsibility cf. the works of Emmanuel Levinas, for instance E. LEVINAS, *Otherwise than Being or beyond Essence* (translated by Alphonso Lingis), Dordrecht 1998. E. LEVINAS, *Totality and Infinity: an Essay on Exteriority*, Dordrecht/Boston/London 1979. I have shown how it relates to a concept of responsibility in social ethics in: H. HAKER, *Ethik der genetischen Frühdiagnostik. Sozialethische Reflexionen zur Verantwortung am menschlichen Lebensbeginn*, Paderborn 2002, chapter 1.

52 M. ALEXANDER, *The New Jim Crow*, 168.

while incarcerated are all elements of a just criminal justice system, i. e. a system that is oriented towards closing the gap between the normative claims of the human rights framework and the reality of injustice. Justice is owed to the victims of crimes, but it also owed to those who commit crimes.

Christian ministry includes the work in prisons; it is rooted in the experience of the first Christians who were targeted by the Roman Empire for their beliefs, and it has always been an important part of pastoral work. Today, prison chaplaincy is not only the work of advocacy for justice but also the concrete site of fostering experiences recognition: in responding to the need to be recognized, the experience of humiliation, degradation and lawlessness that echoes so many narratives of prisoners may be countered by experiences of respect, affirmation, and the right to have rights. Such responses will not transform the systemic injustices but may well pave the way for a reform that not only includes political reforms but also the training and ongoing education of prison workers that could change the concrete interactions with prisoners on all levels. Through these, they will, at a minimum, contribute to the “re-humanization” of those who have been dehumanized, contribute to the re-socialization of those who have been excluded from society, and they will contribute to the restoration of dignity for those who have been denied the right to live a life in dignity, which is possible everywhere under the right conditions, even in the extreme social space of a prison. With respect to US mass incarceration, however, Christian ethics must be a public voice of advocacy, and it must become political. Speaking out against the structural injustice of the US criminal justice system, working with lawyers, legal scholars, and politicians is necessary to promote the changes that are indispensable for transforming human rights violations into the respect of rights and the recognition of prisoners.

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