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Sermon  
***Crime and Punishment***

The Rev. Jack D. Bryant  
Hope Unitarian Church  
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First Reading: Genesis 1:8-16

<sup>8</sup>Cain said to his brother Abel, 'Let us go out to the field.' And when they were in the field, Cain rose up against his brother Abel and killed him. <sup>9</sup>Then the Lord said to Cain, 'Where is your brother Abel?' He said, 'I do not know; am I my brother's keeper?' <sup>10</sup>And the Lord said, 'What have you done? Listen; your brother's blood is crying out to me from the ground! <sup>11</sup>And now you are cursed from the ground, which has opened its mouth to receive your brother's blood from your hand. <sup>12</sup>When you till the ground, it will no longer yield to you its strength; you will be a fugitive and a wanderer on the earth.' <sup>13</sup>Cain said to the Lord, 'My punishment is greater than I can bear! <sup>14</sup>Today you have driven me away from the soil, and I shall be hidden from your face; I shall be a fugitive and a wanderer on the earth, and anyone who meets me may kill me.' <sup>15</sup>Then the Lord said to him, 'Not so! Whoever kills Cain will suffer a sevenfold vengeance.' And the Lord put a mark on Cain, so that no one who came upon him would kill him. <sup>16</sup>Then Cain went away from the presence of the Lord, and settled in the land of Nod, east of Eden.

Second Reading: John 8:2-11

<sup>2</sup>Early in the morning he came again to the temple. All the people came to him and he sat down and began to teach them. <sup>3</sup>The scribes and the Pharisees brought a woman who had been caught in adultery; and making her stand before all of them, <sup>4</sup>they said to him, 'Teacher, this woman was caught in the very act of committing adultery. <sup>5</sup>Now in the law Moses commanded us to stone such women. Now what do you say?' <sup>6</sup>They said this to test him, so that they might have some charge to bring against him. Jesus bent down and wrote with his finger on the ground. <sup>7</sup>When they kept on questioning him, he straightened up and said to them, 'Let anyone among you who is without sin be the first to throw a stone at her.' <sup>8</sup>And once again he bent down and wrote on the ground. <sup>9</sup>When they heard it, they went away, one by one, beginning with the elders; and Jesus was left alone with the woman standing before him. <sup>10</sup>Jesus straightened up and said to her, 'Woman, where are they? Has no one condemned you?' <sup>11</sup>She said, 'No one, sir.' And Jesus said, 'Neither do I condemn you. Go your way, and from now on do not sin again.'

Sermon

The bible is filled with references to crime and punishment. The Torah, for example, contains 613 eternal commandments, most of which are about crime and punishment. The prescribed punishments are harsh in the extreme to our modern sensibilities and invariably the same – death. The approved form of execution was

stoning. That includes death by stoning for ordering the shrimp dinner at Red Lobster. There's no messing around. But there are two unusual stories about crime and punishment in the bible and they are the two best known stories; unlike the edicts of the Torah they are not abstract prohibitions with absolute punishments, but narratives. We get to know something about the people involved. And unlike the edicts of the Torah the outcomes are not in line with a strict constructionist approach to the law. Cain is guilty. There's no question about that. But he is not stoned to death. Instead, – as Alan Dershowitz has quipped – he is put into God's witness protection program. In the story of the woman caught in adultery the charges are dismissed with the admonition to stay out of trouble in the future. How could that happen? We are told over and over again that the God of the old Testament is an angry God. But when put to the test he comes off like one of those wishy-washy liberals who would take into account Cain's troubled family life. The same is true of Jesus who lets the adulteress get away with her crime looking not like the vengeful son of God who is supposed to sit in judgment of the quick and the dead, but like one of those Acorn workers giving business advice to a pimp and his prostitute.

I started thinking about these stories last Tuesday when I found myself reading three articles in quick succession. The first was about Nidal Hasan, the shooter at Fort Hood. The second was on the pending execution of John Mohammed, the D.C. sniper. The third was a report on arguments before the United States Supreme Court on whether it is constitutional to sentence children under the age of eighteen to life in prison without the possibility of parole.

The article on Hasan was questioning whether there was too much political correctness in the initial reaction to the fact that Hasan is a Muslim. It was admirable, the article said, that people should not rush to judgment about a person because of his religious beliefs. At the same time, came the argument, we should not ignore the reality that his religion and its influence on him does matter and that it is a fair and necessary subject of inquiry. All this reminded me of the words of Thomas Szasz:

“Punishment is now unfashionable...[he said] because it creates moral distinctions among men, which, to the democratic mind, are odious. We prefer a meaningless collective guilt to a meaningful individual responsibility.”

I believe it is to our credit as a country that the initial reaction was – for most people – to back away from blaming Hasan's actions on the fact that he is a Muslim. I believe it is to our credit that many people, including General Casey, immediately spoke out against the possibility of a backlash against other people of the Muslim faith. I believe it would be wrong to automatically blame his actions on his faith. And I also believe it would be wrong, it would be naïve, to ignore its influence anymore than one should ignore the religious influences that motivated Scott Roeder to murder Dr. George Tillman.

The Unitarian tradition in America has placed great emphasis on individual salvation on the grounds that salvation is a question of character. Channing said it, Unitarians believe it and that settles it. At the same time it is my perception that Unitarians are prone to see the causes of crime and other social ills as systemic. People abuse because they were abused. People are criminals because they were

raised in poverty or because of racial discrimination or countless other systemic social ills. People themselves are inherently good and would never do anything wrong except for systemic influences. The first principle of our national association embodies this thinking:

We, the member congregations of the Unitarian Universalist Association, covenant to affirm and promote: The inherent worth and dignity of every person.

I think that first principle is a product of the confluence of universalism's belief in universal salvation and Unitarianism's belief in the goodness of human nature. The problem is that it contradicts the notion of salvation by character. It assumes character is present when too often it is not and blames any shortcomings on a collective or systemic guilt that is too often meaningless. And there is a deeper problem with this line of reasoning when applied to the criminal law. Carried to an extreme – and it sometimes is – systemic influences become justification or excuse.

There is growing evidence that Nidal Hasan had become a radicalized Muslim – whatever that means. It seems likely that he felt his religion was justification, even compulsion for the terrible crimes he has committed. The systemic influence of his religion became justification for murder – the same conclusion that Scott Roeder reached last May in Wichita when he shot Dr. Tillman. Their religions are different, but their reasoning the same. And the same reasoning is sometimes used to excuse or exculpate those guilty of crimes on the basis of poverty of childhood abuse or racial injustice.

I believe systemic influences need to be considered because they can have a profound influence on behavior. They may cause people to commit terrible crimes or other wrong doing. It would be foolish to ignore their influence. But I believe an important distinction must be made. Systemic influences such as religion and poverty and racism may explain behavior, but I believe it is, as a matter of religious principle, unacceptable to recognize such factors as justifying or excusing wrongful acts. I believe individual lives reach their highest potential within the context of community – a loving community, but individual responsibility is essential. And regardless of what happens to us, each person remains responsible for his or her actions. To suggest otherwise is not to hold human lives in high regard. It is to see people as inherently weak, inherently unworthy. The theory that systemic evils excuse or justify individual wrong doing is the theory that two wrongs make a right. It is a theory that is morally bankrupt and, in my opinion, religiously unacceptable.

But what of the individual who is guilty? How should that person be punished? There is already talk of capital punishment, of execution, for Nidal Hasan. It strikes me as ironic that his terrible crimes were committed just a few days before the execution of John Mohammed, the D.C. Sniper. His accomplice, Lee Boyd Malvo, who was seventeen years old when the crimes were committed, is serving a life sentence without possibility of parole. I am uneasy with the death penalty. Philosophically, religiously, constitutionally, I do not reject it. In the particular case of John Mohammed I see it as justified and I will lose no sleep over his particular fate. My concern is with its general practice, with the fact that the system is flawed and I am certain – absolutely certain –

that innocent people have been put to death. That is not an issue with John Mohammed or Lee Boyd Malvo or Nidal Hasan. There is no question about their guilt. And I am not a universalist who believes all souls are redeemed. I stand on the Unitarian side of our tradition. But standing on that side, standing in the tradition that believes in salvation by character, I believe that while redemption is not automatic, it is possible. That is what seemed to trouble our Supreme Court this last week when it heard arguments about the Constitutionality of sentencing juveniles to life in prison without the possibility of parole. But to ask what is appropriate punishment is to skip an essential step. Should those who commit crimes be punished? We take it for granted today that the answer is yes. But consider these words from our responsive reading.

Grandfather, Sacred One, teach us love, compassion, and honor that we may heal the earth and heal each other.

Amongst American Indians the response to criminal behavior is oftentimes not punishment, but an effort to bring the individual back into right relationship with the community. That, however, doesn't mean a person is not still punished. One of the common mistakes about forgiveness is the idea that forgiving a person means the guilty person is then excused from punishment. No. Even if a person is forgiven he or she must and should still pay for the crime committed – and that includes the appropriate punishment.

It's important, however, to recognize that the modern emphasis on punishment is just that – the modern emphasis. Prisons are still sometimes called correctional facilities, a remnant of a time when prisons were supposed to function as places of penance – hence penitentiaries – where people would repent of their crimes and be rehabilitated. There was also a time – and remnants of the practice remain – when crime did not elicit punishment, but the obligation to pay for the act done – literally pay for it by paying restitution. Today we have invented an entirely new response to crime. Many prisons today don't exist to rehabilitate or punish the guilty, but to make money for private corporations. Private prisons have become a multi-billion dollar business with commensurate profits. It has become a business whose growth depends upon an ever increasing percentage of the U.S. population being incarcerated. It is an industry that profits from drug abuse by it being treated as primarily a criminal problem instead of primarily a medical problem. It is an industry that profits from longer and longer prison sentences – not because society will benefit, but because corporate profits will rise. As a moral and religious principle, I believe people should not be sent to prison that others might profit. That, I believe, is a crime in and of itself. I suspect something of the sort was at work in the story of the woman caught in adultery. The story suggests the woman was charged with a crime not because of what she had done, but as a way of trying to undermine the ministry of a wandering Jewish teacher who was upsetting the political applecart. Better she should go free – even if she had committed a crime – than allow her to be punished for ulterior purposes.

One of the aphorisms of the law says, "Hard facts make bad law." What will be the fate of Nidal Hasan? Should he be punished because he is a Muslim? No. Should we be blind to the connection between his faith and his deeds? No. Should he be forgiven? That's not for any of us to say. Only his victims can answer that question. One line of argument says there are crimes so great that only God can forgive. I think

that is the case with Hasan. But I don't believe in a personal God who answers prayers or forgives. How, then, should he be punished? A trial will decide that – as it should. And what about the 9/11 terrorists who are now to be tried? It would seem that with all the difficult questions surrounding that great crime that the least of our worries would be an argument whether they be tried in civil courts or military tribunals. But there is great anger being expressed over that decision. Why? Is it a legitimate concern about crime and punishment? Or was the original decision to create those military tribunals – a not unprecedented step, but unusual – an act of political theater. You think that could never happen? I would direct your attention to the editorial in this morning's Tulsa World. It is a mocking article that suggests our newly elected mayor's first task will be to issue memorandums banning the release of child molesters into our public parks and immediately stopping the confiscation of firearms from law abiding citizens. Much of the mud that was thrown during the campaign was in the form of accusations about the other candidate being soft on crime and punishment.

The problems of crime and punishment are serious, sometimes intractable. A close reading of the biblical tradition suggests even God doesn't know the answer. An element of politics is, I think, inescapable – but never helpful. Punishment and restitution are called for, but not revenge. And – perhaps most importantly – questions of crime and punishment should not be a matter of the application of abstract legal principles that always end with the admonition, "Off with their heads." The best response to crime is one that takes a narrative approach that insists we get to know something of who did what and why. That's because crime and punishment is but a part of the larger problem of justice. And just as steel is made stronger by tempering, so too is justice made stronger by being tempered with mercy.

Amen.