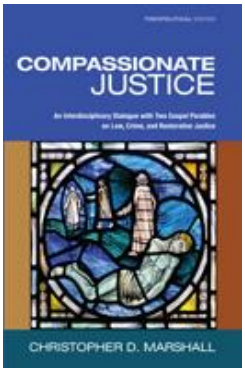

Book Review of *Compassionate Justice: An Interdisciplinary Dialogue with Two Gospel Parables on Law, Crime, and Restorative Justice*, Christopher D. Marshall, Eugene: Cascade Books, 2012. 386 pages

Introduction

At the first national teleconference in the United States on Restorative Justice (in 1991 I believe), a woman asked the panel about the Christian roots of Restorative Justice. She was assured by a panelist that there were none, and no one on the panel said differently. Christopher Marshall's first book in this field, *Beyond Retribution: A New Testament Vision for Justice, Crime and Punishment*, Grand Rapids: Eerdmans, 2001, and *The Spiritual Roots of Restorative Justice*, New York: SUNY Press, 2001, published ten years later, demonstrated otherwise. So does this second book by Marshall. A review of Marshall's first book mentioned makes up the preceding chapter.

Christianity not only played *the essential role* in the development of the Western legal tradition (for good or for ill) as shown for instance in Harold Berman's magisterial *Law and Revolution: The Formation of the Western Legal Tradition* (1983), Christianity centrally gave rise to the recent worldwide development of Restorative Justice programs and theory.

David Cayley's CBC *Ideas* combined documentary series *After Atheism*, Toronto: Canadian Broadcasting Corporation 2012, and *The Myth of the Secular*, 2012, present the case that the secular is suffused with religious theory from which it arose, and on which its best ideas and moral impulses are based. Marshall's books are solid instances. Marshall says late in the book:

> Only someone woefully ignorant of history could possibly view such moral sensibilities [as "care for the wretched of the earth"] as the accidental product of nature; rather they are the fruit of the Christian revolution in history (p. 257).

He then discusses this at greater length.

Marshall explains in the Preface two initial hunches about the applicability to Restorative Justice of two New Testament parables: The Prodigal Son and The Good Samaritan. Both not only are enriched by Restorative Justice interpretations we discover in this book (a not so frequent phenomenon), they in turn significantly contributed to Restorative Justice theory and practice, the latter being the author's intention to further.

The author avers that

> ... two more fecund stories in the development of the spiritual, aesthetic, moral and intellectual traditions of Western civilization are difficult to imagine (p. 1)."

He indicates that

> the term restorative justice was coined in the 1970's... (p. 4).

Australian criminologist Kelly Richards shows that such terminology was in fact used decades before. (2007, pp. 35ff.) Beginning in the 1970's, it however became widespread.

Marshall notes that

> For present purposes, it is sufficient to understand restorative justice as a way of responding to wrongdoing and conflict that seeks above all else, to repair the harm suffered, and to do so, where possible, by actively involving the affected parties in mutual dialogue and decision-making about their needs and obligations (p. 5).

Chaplaincy and prison visitation initiatives however embrace Restorative Justice, while predating the terminology. Neither actively involves the affected parties in repairing the harm of crime. Marshall acknowledges that both "process" and "values" may be attached to Restorative Justice, and should not be pitted against the other, rather held together. Most of his book extracts and applies "values" from the two parables.

Of further note: aboriginal understandings and practices of Restorative Justice the world over predate the terminology and preclude any singling out of a "grandfather" of Restorative Justice.

Marshall nonetheless states that

> The seminal work [on Restorative Justice] is Zehr, *Changing Lenses*, [Scottdale: Herald Press, 1990/2005]... (p. 6).

Marshall is unaware because was not participant in the North American early years of Restorative Justice, *simply overstates* in using the imprecise term "seminal".

In the interest of historiographical accuracy: *it is hagiographical myth that Zehr was the "grandfather" of Restorative Justice, no matter how one looks at the in fact founding histories (plural)*[1]. There is no such singular – or patriarchal! – pedigree. What can be said is Zehr's 1990 publication had wide cachet in the Restorative Justice field.

Many of us who approached the subject theologically looked elsewhere early on for in-depth theological analysis: not least to books mentioned below; to Marshall's books later; etc. Other works, in particular by Dan Van Ness and Karen Heetderks Strong (1986; 1997) both were generically seminal and took also a New Testament approach to the issue, which Zehr's book did not.

Several other works besides by **Dan Van Ness** (1986) were similarly "seminal" in the sense Marshall intends, which many of us were reading for years before Zehr's book appeared[2]. They included:

- *Gerechtigheid als vrijplaats - de terugkeer van het slachtoffer in ons recht*, uitg (1985), by **Herman Bianchi**; later published in English as
- *Justice as Sanctuary: Toward a New System of Crime Control* (1992).
- *Abolitionism: Towards a Non-repressive Approach to Crime: Proceedings of the Second International Conference on Prison Abolition, Amsterdam* (1985), edited by **Herman Bianchi** and **René van Swaaningen**, (1986), last chapter of which is first chapter of *Justice That Transforms: Volume One*.

> Though "prison/penal abolitionism" itself has sadly not been widely embraced, Zehr never to my awareness engaged this crucially formative aspect of Restorative Justice. Hence **Ruth Morris'** critique of Zehr and of the term: in a phrase, they were "*Not (radical) enough!*". Her favoured term reflected in this series' title was *Transformative Justice*.[3]

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[1] See again Richards (2007).

[2] I make this point in some parts with different detail in the first chapter of *Justice That Transforms: Volume One*.

[3] Ruth accordingly organized the first International Conference on Prison [later Penal] Abolition (ICOPA). Zehr registered no interest.

A chapter in *Volume One* of this series is entitled "*Not Enough!*". It is also on my website here.

- Yet another publication, *Christian Faith and Criminal Justice: Toward a Christian Response to Crime and Punishment* (1978), by Catholic lay scholar **Gerald Austin McHugh**, had a much earlier significant impact well before Restorative Justice terminology was commonplace.
- One could also name Norwegian criminologist **Nils Christie** and others as early seminal authors.
- Lastly, many of us in those formative days began reading brilliant French theorist **René Girard**, whose writings directly contradicted widespread views of the atonement that in turn formed the backbone of the development of Western retributive criminal law/justice understandings.[4] **Vern Redekop** also published a widely read work on Girard and criminal justice, to which Girard in fact gave his *imprimatur*[5]. Zehr paid no attention to Girard in relation to the atonement and Restorative Justice theory.

Continuing with the review: Marshall argues that

> If it is to flourish then, restorative justice must be anchored in alternative 'communities of value'... (p. 7).

One such he challenges ought to be the Christian church. Restorative Justice should

> ... call the church's attention back to what Jesus himself expounded in his teaching and embodied in his life (p. 7).

The two parables examined are outstanding examples of Jesus' teaching, the author declares.

The three parts of the book are explained:
Part 1 – "The Good Samaritan" – "Restoration and the Victim"; Part 2 – "The Prodigal Son" and "Restoration and the Offender"; Part 3 – the meaning of compassion and its connection to justice – "Just Compassion".

The author concludes the book with discussion of a critique of Restorative Justice by legal scholar Annalise Acorn in her book *Compulsory Compassion: A Critique of Restorative Justice* (2004).[6] Over against Acorn, Marshall contends,

> Both parables teach that it is only by being 'moved with compassion' at the reality of human suffering... that we are adequately equipped to understand and achieve what is needed to bring about true justice... (p. 11).

Before engaging the first parable directly, Marshall discusses the power of story-telling, adducing multiple ways they are used in society

> to enact procedurally and politically the moral vision and priorities" articulated. "Stories, it seems, are socially formative and morally effectual in a way that abstract rules and philosophical

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[4] The final chapter of this Volume is a book review of the premier work expressing some of that history: *God's Just Vengeance*. The classic work is Berman, 1983.

[5] In my next projected series on Peace/Peacemaking, I will include an introductory essay on "René Girard and Violence" that discusses his impact on multiple disciplines, including theology, atonement theory, and Restorative Justice.

There will also be included in this current series a *Volume* of the "**Occasional Papers**" published by Mennonite Central Committee from 1984 to 1994, edited by Zehr, Dave Worth, and me. The most widely sought after paper in that series is entitled: Scapegoats, the Bible, and Criminal Justice: Interacting with René Girard by Vern Redekop.

I also contributed a chapter to *Stricken By God?* that discusses Girard with reference to nonviolent views of the atonement and Restorative Justice. That chapter is also included in this *Volume*.

[6] The following chapter contains my Book Review of her unfortunate anti-Restorative Justice diatribe.

> principles are not... it is the stories we tell and accord authority to because of their truthful insight into moral experience that best enable us to identify the virtues and values we consider desirable, to elicit social obligation towards them, and to encourage and sustain shared moral vision (p. 19).

He states

> ... it is hard to think of another story that has been more influential in molding personal and political virtue than the parable of the Good Samaritan (p. 19).

He moves to a critique of post-Enlightenment liberalism that

> ... mistakenly assumes... that freedom and rationality can flourish independently of any undergirding narrative that is commonly held to be true. We are free insofar as we have no common story that constrains us (p. 20)." On the contrary, claims Marshall, lists of political principles, ethical values and codes of human rights are inadequate. "We also need unifying, authoritative, and empowering *stories* that educe and enact moral truth, for moral character and virtue are inherently narrative-dependent phenomena (p. 20)." He holds up as exemplary Martin Luther King Jr.'s repeated use of the " 'magnificent little story' of the Good Samaritan (p. 21).

The author notes

> The parable's particular pertinence to issues of criminal justice in general, and restorative justice in particular, is evident in at least four ways (p. 35).

They are:

- A Focus on Victimization (pp. 36 – 38);
- A Duty of Concern for Victims (pp. 38 – 40);
- A Perspective on Law (pp. 40 – 50);
- and A Declassification of the Adversary (pp. 50 – 53).

The next chapter elaborates more fully on these points.

He further indicates that the love commandments (love God/love neighbour) epitomize the meaning of the law, then writes:

> The available evidence suggests that Jesus adopted a particularly lucid and compelling position on the absolute priority of love and the inseparability of both commands, a position that has had an enduring impact on subsequent Christian tradition (p. 65).

In a footnote, he adds:

> Elsewhere in the New Testament, love of neighbor alone is used to summarize the law (Gal 5:14; Rom 13:9; Jas 2:8) (p. 65)."

Again:

> ... love for God includes and enables love of neighbor, while love of neighbor expresses and requires love for God (p. 69).

It seems the litmus test for love of God is love of neighbour/enemy. The *Ten* Commandments are reduced to *Two* love commandments by Jesus, that Paul and James sum up in *One*: Love of Neighbour. To the extent we fail in our love of neighbour/enemy, we fail in our love of God. "Love" in the New Testament is an active embrace of the other in friendship, "benevolent *action*, not affective feelings (p. 72).,

a "love" that as Paul declares in Rom 13:10

> *... does no harm to its neighbor. Therefore love is the fulfillment of the law.*

It is difficult to notice the love commands' overarching positive "enduring impact on subsequent Christian tradition" at least in the West, when the trilogy of Western doctrines of "just war", "just deserts", and "just hell (of eternal conscious torment)" have wreaked or threatened massively the opposite: numerically incalculable "harm to the neighbour".

A study of Western Church history can wonder at "subsequent Christian tradition" disconnect. Hence Marshall's comment:

> ... Jesus' parable surely excludes the legitimacy of using violence in the name of love to render other people as victims, even if they are perceived to be guilty of violent wrongdoing themselves (p. 135).

In the final chapter of Part 1, Marshall discusses enacting "Samaritan Laws", observing that

> Current law, in essence, reflects the viewpoint of the priest and the Levite more than it does the perspective of Jesus or the merciful Samaritan (p. 174).

He argues for their existence more at a symbolic level, rather than to punish non-compliance. In response to liberalism, he says finally:

> Samaritan laws attest to the fact, sometimes forgotten in liberal society, that it is impossible to be truly free on our own, for we cannot escape from being our brother [*sic*] or sister's keeper (p. 176).

Part 2 discusses the parable of the Prodigal Son under the heading, "Restoration and the Offender".

Marshall indicates its enormous impact wherever the story has been told. This includes theologically. It accentuates

> ... the fundamental driving force behind the good news of salvation proclaimed by Jesus in the Gospel tradition: the costly love and restoring justice of the reign of God (p. 188).

Reading the parable through a criminal justice lens makes sense for at least two reasons. First, the three main characters are they in all crime: offender, victim, and wider community. Second, the older brother's reaction focuses attention on the "justice" of the father's actions. Marshall sees the parable giving priority

> to the restoration and reintegration of offenders as an outworking of the discipline of forgiveness (p. 194).,

over against the "law-abiding" community (that in fact is largely self-deceptive about its own "repeat opportunistic offending" according to Thomas Gabor's *'Everybody Does It!': Crime By the Public*, Toronto (1994.)

Marshall cites

> three crucial elements of accountability: acceptance of moral blame, recognition of the impact of one's behavior on others, and acknowledgement that relationships have been damaged and can only be restored by an act of grace on the part of the victim (p. 211).

But more is needed: namely repentance that paves the way for reconciliation and restoration.

In a chapter entitled "A Better Justice", Marshall argues

> that there is no justice without mercy and mercy is essential to attaining justice in its thicker or restorative sense... (p. 219).

In further discussing the parable, Marshall suggests that

> Perhaps the profoundest insight of restorative justice theory, and the secret to the power of its simple mechanism of bringing victims and offenders to talk about what has happened, is its recognition that offenders and victims are on parallel journeys of dealing with the crushing impact of shame... and that each party, paradoxically, holds the key to the other's healing. This key, moreover, is the mutual conferral of honor... through their voluntary participation in the process (p. 231).

Within however the larger "law-abiding community" (self-deceptively as Thomas Gabor's *'Everybody Does It!'* mentioned earlier indicates), several dynamics preclude ready acceptance by collective society of rehabilitation or reintegration of the offender. They include: harsh judgmentalism (p. 234), cold self-righteousness (p. 236), and embittered victimhood and distrust (p. 239). To these, Marshall claims,

> Whatever else punishment may achieve, it cannot give life to the dead or bring joy, music, and dancing into the experience of former victims (vv. 23, 25, 32). Only repentance, confession, compassion, and forgiveness – the "gentle virtue of mercy" – can satisfy justice in its thickest sense (p. 244).

> Justice in its thickest sense [is] not only the restoration and reintegration of offenders... but also to display towards them an open-handed hospitality... (p. 245)

Marshall suggests that

> ... the particular emotion of compassion has ended up being corralled off from the public sphere and, a bit like religion in public society, confined to the private sphere of personal sentiment and individual benevolence (p. 255).

He argues instead for a "public compassion" that does not strictly separate emotion from reason.

In relating compassion to the criminal justice system, the author presents four interrelated ways compassion can aid judicial decisions. He also discusses "The Limits of Legal Compassion". Finally, he discusses "Restorative Compassion" with the foil of Canadian legal scholar Annalise Acorn's *Compulsory Compassion* mentioned above. The publication serves up a book-length critique of Restorative Justice, an analysis, Marshall asserts that

> ... is neither academically rigorous nor empirically grounded (p. 307).

Its serious defects notwithstanding, Marshall writes,

> The book's greatest strength, apart from its literary virtuosity, is its analysis of the distinctive role played by the concept of right-relation in restorative thought (p. 319).

Marshall draws to a close by indicating that both parables

> ... summon a commitment to just compassion for victims and compassionate justice for offenders as the heart of God's law, the centerpiece of God's will, and the key to life itself... (p. 321)

The book concludes with these words:

> [If] ... restorative justice finally takes hold of our collective hearts and minds, it will not only be consistent with Jesus' call to radical forgiveness. It will also be the social realization of the two most powerful narrative examples of compassionate justice ever invoked: the figure of the enemy-loving, wound-binding, caregiving, compassionate Samaritan, and the figure of the patient, forgiving, banquet-throwing, compassionate father of the prodigal son (p. 322).

I would agree with all the comments on the book's back cover, including:

> This is how political theology ought to be done.,

and

> Few but Marshall could have written this book.

When giving a formal personal reference, one is generally asked for "weaknesses" sometimes difficult to provide. So it is with this publication. I have raised a few minor "quibbles"; and one need for historiographical revision.

It is a superb study.

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