

Restorative Justice and Spiritual Origins, November 19, 2004

By Wayne Northey

In 1974 two youths who had been drinking and had been “talked to” by the police already, took out their frustrations on the small community of Elmira, Ontario, by doing damage to twenty-two different vehicles and homes. Several months later the youths pleaded guilty to the charges, and Judge Gordon McConnell in Kitchener ordered a Pre-Sentence Report. Mark Yantzi, the Mennonite Probation Officer writing up the report, discussed the case with the local Mennonite Central Committee court volunteer, Dave Worth. Both had been reading recent publications by the Law Reform Commission of Canada in which it had been stated that reconciliation played an important role in criminal justice. They also knew that reconciliation was the central concept of their Christian faith.

Yantzi proposed in his Pre-Sentence Report that the youths would benefit from meeting face-to-face with their victims and making amends. Judge McConnell was intrigued by the idea, and discussed it with the probation officer. The Judge indicated that the notion had lots of merit, but it was simply not done in Western jurisprudence. He made a fateful choice nonetheless when he decided “Why not?,” and put the sentencing over until Yantzi and Worth could take the youths to meet each of the victims. They did and out of that experience arose the first ever “Victim Offender Reconciliation Project (VORP)”.

The above story, the 30th anniversary of which was celebrated this summer, known in the Restorative Justice movement as “The Elmira Case”¹ became a kind of proverbial shot that echoed around the world. Over 200 mediation programs in North America alone trace their origins to the program that came into existence as a joint venture between Ontario Correctional Services and the Mennonite Central Committee. Several hundred similar programs now exist in Europe and elsewhere.

A Little Bit of History²

To set a context for the programmatic emergence of Restorative Justice late in the twentieth century some historical comments would be helpful.

Almost a millennium ago, in the late 11th century, European history underwent a significant upheaval some call “The Papal Revolution”. During this time, the Church moved to consolidate its power over all souls and kings of Europe, the great universities began to emerge, and the Western legal tradition started to take shape, as new law codes were formulated for study and promulgation throughout the Western world.

In a fateful interplay between Church and Society far too complex to describe in a short article, secular states began to follow the lead of how the Church dealt with its religious heretics. These “social heretics” began to emerge under new state law codes as “criminals” whose victims were no longer the actual victims, but “Rex” or “Regina”, or later “We the People” under the United States Constitution.

¹ See a fuller account in Dean Peachey’s “The Kitchener Experiment” (1989).

² I am drawing on the work of Berman (1983/1997), Strong and Van Ness (1997), and Girard, in particular: (1977); (1986); (1987) and (2001).

So the evolution of the criminal justice system in the West was away from *community and victim centred justice* towards *state and offender centred justice*. The former had been a dominant approach in the ancient Hebrew culture, in Roman society when applied to its own citizens, and in many pre-colonial African, North American and worldwide indigenous cultures. In the Reconstruction of Japan following World War II, the Japanese became the first industrialized country nationally to embrace this more restoratively oriented way of justice.³

There was previous dominant Western religious undergirding of this non-restorative approach which led to a marriage of law and religion that placed, on the one hand, primary emphasis upon the offender's violation of the law while dropping any concern for rehabilitation of the victim. On the other hand, it drew on Roman slave law as a model for meting out the worst of punishments imaginable upon the offender.⁴ This form of response to crime is known as “retributive justice”, and has dominated Western jurisprudence for a millennium.

A Christian Corrective

A few years ago, at a VOMA (Victim Offender Mediation Association) conference in Des Moines, Iowa, I saw a plaintive note on a bulletin board: DOES ANYONE KNOW OF ANY RESTORATIVE JUSTICE VIDEO RESOURCES THAT ARE NOT RELIGIOUS?!

Restorative Justice in North America, birthplace of its contemporary worldwide expression from within criminal justice systems, grew out of a religious community, specifically as indicated the Mennonite community of Kitchener, Canada, as an explicit religious response to a social problem⁵. No culture exists without religious foundation, claims anthropologist René Girard. If, as Girard continues to explain in an expansive theory of the genealogy of violence⁶, a “scapegoat mechanism” is generated by religion to address the problem of violence, by which sacrificial victims are immolated to restore peace and social cohesion, then religion just may be the source of the corrective to universal scapegoating violence as well⁷.

Beyond Retribution

Beyond Retribution: A New Testament Vision for Justice, Crime, and Punishment (Marshall, 2001) is a stirring instance of rereading the Judeo-Christian founding texts to provide a basis, not for continued scapegoating violence in the Western secular state (which still has intact many trappings of a bygone religious era!⁸), but for a profound

³ John Haley is the expert on this. Of his many publications, see for instance Haley (1989).

⁴ Herman Bianchi explicates this in *Justice as Sanctuary* (1994).

⁵ See the story in “Introduction”, *Mediation and Criminal Justice: Victims, Offenders, and Community*, edited by Martin Wright and Burt Gallaway (1989).

⁶ Charles Bellinger (2000) argues that René Girard and Søren Kierkegaard are the West’s most profound theorists on the cultural origins of violence. For an introduction to Girard, see Williams (1996).

⁷ This is in fact the “third great moment of discovery” for Girard, according to him. “The third great moment of discovery for me was when I began to see the uniqueness of the Bible, especially the Christian text, from the standpoint of the scapegoat theory. The mimetic representation of scapegoating in the Passion was the solution to the relationship of the Gospels and archaic cultures. In the Gospels we have the revelation of the mechanism that dominates culture unconsciously (Williams, 1996, p. 263).” Girard has since published a full discussion of his reading of the New Testament anthropologically with reference to violent origins in *I See Satan Fall Like Lightning* (2001).

⁸ In *Scapegoats, the Bible, and Criminal Justice: Interacting with René Girard* (1993), Vern Redekop asks: “Is it possible that what we call a criminal justice system is really a scapegoat mechanism?” His response is: “In a secular

redirection of traditional interpretation of those texts away from violence, “beyond retribution”, towards, biblically, *shalom*, reconciliation and forgiveness.⁹

Marshall’s book is highly significant to “secular” Western culture, steeped in Judeo-Christian legacies, in its quest to move towards Restorative Justice.

In response to the Judeo-Christian sacred texts, two broad approaches have been taken: rejecting the texts in a bid to find a higher humanism¹⁰; or reinterpreting them in the process of “appropriating their inner dynamic”¹¹. The former I suggest is culturally akin to cutting off the nose to spite the face. Marshall demonstrates the latter with his publication. He has thereby set a new benchmark in biblical studies on justice, crime, and punishment. With it, one arguably sees the Bible as spiritually “the first and main source” for the emerging phenomenon of Restorative Justice¹².

The study is wide-ranging. Marshall states at the outset that his “premise is that the first Christians experienced in Christ and lived out in their faith communities an understanding of justice as a power that heals, restores, and reconciles rather than hurts, punishes, and kills, and that this reality ought to shape and direct a Christian contribution to the criminal justice debate today (p. 33).”

Marshall further challenges directly the longstanding dominance of atonement as “satisfaction” and “penal substitution”, both retributive constructs, which historian Timothy Gorrige in a study of the impact of such understanding upon the development of western criminal law declares to be a “mysticism of pain which promises redemption to those who pay in blood (Gorrige, 1996, p. 102)¹³”. Marshall writes: “The logic of the cross actually confounds the principle of retributive justice, for salvation is achieved not by the offender compensating for his crimes by suffering, but by the victim, the one offended against, suffering vicariously on behalf of the offended – a radical inversion of the *lex talionis* [law of retaliation] (pp. 65 & 66).” He sees Jesus as embodiment of God’s justice, and his way as non-retaliation.

Marshall considers also the *Purpose and Ethics of Punishment*, and after discussing all the

democratic society, nothing is as sacred as the law code and the justice system which enforces it. The buildings in which laws are made are the most elaborate and the courts in which decisions are made about points of law are the most stately. Formality, uniforms, and respect surround the agents of law.” He concludes: “It is possible to think of the criminal justice system as one gigantic scapegoat mechanism for society (pp. 1, 16, and 33).”, and illustrates convincingly.

⁹ A similar orientation is found in the publication *The Spiritual Roots of Restorative Justice* (Hadley, 2001), to which this writer co-contributed the chapter on Christianity. It is also reflected in *God’s Just Vengeance* (Gorrige, 1996). It is germane to point out that the impetus for these publications was the already established tradition from the Christian faith community of rereading its sacred texts in a nonsacrificial way, in the direction of Restorative Justice.

¹⁰ Girard refers to this as “crucifying the text”. See Williams (1996).

¹¹ “It is an irony of history”, claims Religious Studies professor James Williams, “that the very source that first disclosed the viewpoint and plight of the victim is pilloried in the name of various forms of criticism... However, it is in the Western world that the affirmation of ‘otherness,’ especially as known through the victim, has emerged. And its roots sink deeply into the Bible as transmitted in the Jewish and Christian traditions... the standpoint of the victim is [the West’s] unique and chief biblical inheritance. It can be appropriated creatively and ethically only if the *inner dynamic* of the biblical texts and traditions is understood and appreciated. The Bible is the first and main source for women’s rights, racial justice, and any kind of moral transformation. The Bible is also the only creative basis for interrogating the tradition and the biblical texts (Williams, 2000, pp. 195 & 196).”

¹² See Bianchi (1994) for a similar commitment to biblical sources, but from a secular perspective.

¹³ Reviewed in *Contemporary Justice Review*, Northey (1998).

main theories holds out the notion of “Restorative Punishment”, which he believes is *Punishment as the Pain of Taking Responsibility*. He retains the word “punishment”, but first empties it of its punitive thrust, then reinvigorates it with an accountability/responsibility payload.

“Restoration, not retribution, is the hallmark of God’s justice and is God’s final word in history (p. 199).”, Marshall claims. The traditional Christian doctrine of hell as “eternal conscious punishment” shrivels under the glare of this biblical reassessment.

Marshall also finds no biblical mandate for the death penalty. “Capital punishment is incompatible with a gospel of redemption and reconciliation (p. 253).”, he succinctly sums up.

In his final section he presents *Forgiveness as the Consummation of Justice*. Marshall discusses the South African Truth and Reconciliation Commission headed by Archbishop Desmond Tutu as illustrative of the attempt at a state-wide process and application of forgiveness and accountability in post-apartheid South Africa. Marshall quotes Tutu saying, “[W]ithout forgiveness, there is no future (p. 283).”¹⁴ This conclusion is similarly argued persuasively in Donald Shriver’s *An Ethic for Enemies: Forgiveness in Politics* (1995). “Forgive and forget” gives way to “Remember, forgive, and be free.”

Conclusion

Marshall’s publication demonstrates how important it is to read informed biblical reflection on social issues. All cultures, secular Western societies no less, are profoundly religious. A Christian reading of Marshall’s book is immensely hopeful, both about theological contributions to the public square and the future of Restorative Justice. A secular reading of Marshall’s book is highly educative in understanding both the religious roots of retributive justice, and the religious basis for critiquing those very origins. I suggest that Marshall’s book, and *The Spiritual Roots of Restorative Justice* (Hadley, 2001), should be required reading for all interested in this movement.

Anthropologist René Girard notes: “In the Hebrew Bible, there is clearly a dynamic that moves in the direction of the rehabilitation of the victims, but it is not a cut-and-dried thing. Rather, it is a process under way, a text in travail; it is not a chronologically progressive process, but a struggle that advances and retreats. I see the Gospels as the climactic achievement of that trend, and therefore as the essential text in the cultural upheaval of the modern world (Hamerton-Kelly, 1987, p. 141).”

If Girard is right, part of that “cultural upheaval” is restorative (transformative) justice.

¹⁴ Almost title of Tutu’s magisterial reflection on Restorative Justice (2000), through the story of the Truth and Reconciliation Commission, which Tutu headed from its inception. It is reviewed in *Catholic New Times* (Northey, 2002).

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