

Spirituality Evaluation of Restorative Justice, Sixth International Conference on Restorative Justice, “Best Practices in Restorative Justice”, June 4, 2003

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Introduction

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 in the mid-seventies in the Mennonite community of Kitchener, Canada, as an explicit religious response to a social problem¹. No culture exists without religious foundation, claims anthropologist René Girard. If, as Girard continues to explain in an expansive theory of the genealogy of violence², 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 well³.

Beyond Retribution

I thought I’d look at a Christian Spirituality of Restorative Justice through the recent publication of a book that directly addresses this issue.

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 era⁴), but for a profound redirection of traditional interpretation of those texts away from violence, “beyond retribution”, towards, biblically, *shalom*, reconciliation and forgiveness.⁵

¹ See the story in “Introduction”, *Mediation and Criminal Justice: Victims, Offenders, and Community*, edited by Martin Wright and Burt Gallaway (1989).

² 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).

³ 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).

⁴ 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 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.

⁵ 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* (Gorringe, 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.

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

In response to the Judeo-Christian sacred texts, two broad approaches have been taken: rejecting the texts in a bid to find a higher humanism⁶; or reinterpreting them in the process of "appropriating their inner dynamic". The former I suggest is culturally akin to cutting off the nose to spite the face. Marshall demonstrates the latter with this 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 Justice⁷.

In 1965, noted New Testament scholar C.F.D. Moule published an article in a little known Swedish academic journal. Entitled "Punishment and Retribution: An Attempt to Delimit Their Scope in New Testament Thought", he began with this observation: "It is likely, I know, that many readers – perhaps most – will find themselves in disagreement with the radical thesis I am about to present. But my hope is that time will not have been wasted – whatever the conclusions reached – because the thesis leads us in any case to ponder, once more, the very heart of the Gospel." He continued with a terse summary of his conclusions: "What I offer for your consideration is the thesis that the word 'punishment' and other words related to it (especially 'retribution') have, if used in their strictly correct sense, no legitimate place in the Christian vocabulary (Moule, 1965, p. 21)."

His was a clarion call for the Judeo-Christian tradition to move "beyond retribution" in its appropriation of the sacred texts⁸. Thirty-six years later, New Testament scholar Chris Marshall published a book-length study with similar conclusions. There was nothing like it in the interval.

The study is wide-ranging. Section one, "Introduction", considers various Christian sources of moral guidance; early Christian witness from the "underside" ("they write as, to, and on behalf of the victims of abusive state power (p. 16)"); and how Christian faith speaks to the public arena (neither "directly and legalistically to the machinery of the state"

⁶ Girard refers to this as "crucifying the text". See Williams (1996).

⁷ See Bianchi (1994) for a similar commitment to biblical sources, but from a secular perspective.

⁸ Moule, an internationally renowned New Testament scholar, eventually became a staunch supporter of Restorative Justice, after reading Howard Zehr's book, *Changing Lenses* (1990).

nor “irrelevant[ly] to wider social issues (p. 31).” Marshall states here that his “main intention is to survey a broad range of New Testament texts pertinent to the subject of crime and punishment in order to ascertain the extent to which they reflect what might be called a vision of restorative justice (p. 32).” As to the contour of that vision, “My 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).”

In the second part Marshall considers “The Arena of Saving Justice”, with a look at Paul and Jesus, seeing in Paul *Justice As the Heart of the Gospel, Divine Justice as Restorative Justice, Justification by Faith as Restorative Justice*, and the work of Christ (atonement) as *Redemptive Solidarity, Not Penal Substitution*. With this last heading Marshall challenges directly the longstanding dominance of atonement as “satisfaction” and “penal substitution”, both retributive constructs, which historian Timothy Gorringer 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 (Gorringer, 1996, p. 102)⁹”. 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).” Finally, he sees Jesus as embodiment of God’s justice, and his way as non-retaliation.

In the third Section, “Punishment That Fits”, Marshall looks at the *Purpose and Ethics of Punishment*, and after discussing all the main theories considers 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 all its punitive thrust, then reinvigorates it with an accountability/responsibility payload. The reader may decide if this semantic make-over is successful.

With the fourth Section, “Vengeance is Mine”, Marshall looks at divine and human justice, including the issue of “Final Punishment”, the doctrine of hell. His overall conclusion is, “Restoration, not retribution, is the hallmark of God’s justice and is God’s final word in history (p. 199).” The traditional Christian doctrine of hell as “eternal conscious punishment” shrivels under the glare of this biblical reassessment of the ultimate, literally most horror-filled, time-honoured image of a God who takes on the character of “a bloodthirsty monster who maintains an everlasting Auschwitz for victims whom He does not even allow to die (theologian Clark Pinnock’s words, quoted in Dixon, 1992, p. 149).” One author, though vigorously committed to this traditional interpretation, candidly admits: “Obviously, no follower of Christ wants to be guilty of presenting God as one more heinous than Hitler (*ibid*, pp. 149 & 150).” Indeed, claims Marshall. And one need not, according to the biblical texts!

The fifth Section, “Justice That Kills”, spends fifty pages on the issue of capital

⁹ Reviewed in *Contemporary Justice Review*, Northey (1998).

punishment. It should be no surprise that Marshall 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.

The final Section, “Conclusion”, 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).”¹⁰ 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.”

The book is well written, cogently argued, and widely researched. Few key books are left out of the discussion, except Shriver’s noted just above, and Sister Helen Prejean’s *Dead Man Walking* (1993). In the words of a reviewer on the back cover of *Beyond Retribution* (Graham N. Stanton), “There is no comparable discussion [anywhere].”

Richard Hays in *The Moral Vision of the New Testament* (1996) states that *tradition, reason, and experience* throughout history have prevented biblical Christians from living out the radical nonviolence of the Gospel. Chris Marshall has pointed the way of such a biblical reading in response to crime and justice. Will biblical Christians and a secular culture profoundly impacted by biblical revelation rise to the challenge, or settle as so often for sub-biblical, even non-biblical views about retribution? This book stands as direct challenge to embrace a justice “beyond retribution” “that manifests God’s redemptive work of making all things new (p. 284).”

Marshall’s publication also 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 on every academic reading list of courses on restorative justice.

Conclusion

In 1993 Lee Griffith published *The Fall of the Prison: Biblical Perspectives on Prison Abolition*. His is a *tour de force* on a spirituality of penal abolition¹¹. The book’s opening shot is: “The gospel is profoundly scandalous, and until we hear at least a whisper of its scandal, we risk not hearing any part of it (Griffith, 1993, p. 1).” He presents his thesis in

¹⁰ 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).

¹¹ He has recently written another *tour de force*: (2002).

beguilingly simple terms: “Ultimately, there are not two kingdoms but one – the kingdom of God... ‘Freedom to the captives’ is not proclaimed [by Jesus] in some other world but in our world. The matter finally comes down to a peculiar question: Are there prisons in the kingdom of God? And if there are no prisoners there and then, how can we support the imprisonment of people here and now? For in fact, the kingdom of God is among us here and now (*ibid*, p. 28).”

How indeed can a Christian spirituality, responsive to the liberating thrust of the New Testament founding texts, so utterly contradictory to state-sanctioned scapegoating violence (the very kind that crucified its founder!), support penal (pain delivery!) justice? That is the “peculiar question” this reflection leads to.

A contemporary theologian writes: “...the human walk... begins in slavery and ends in freedom, and [its] point of progress at every moment is faith (Johnson, 1990, p. 11).” That is the quintessence of spirituality arising from the Judeo-Christian narrative. It shouts from the housetops: “Freedom for the prisoners (Luke 4:18)!” and “It is for freedom that Christ has set us free (Galatians 5:1)!”

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 penal abolition and restorative (transformative) justice.

One writer commented on Griffith’s book thus: “Jesus said he had come to proclaim release to the prisoners. In *The Fall of the Prison* Lee Griffith makes what Jesus meant altogether clear. Now it is for us who have ears (quoted in Griffith, 1993, back cover).”

Indeed! What is needed is a spirituality of transformative justice with ears – then hands and feet!

From a Christian founding texts perspective on restorative justice spirituality, the quest will never end until “Kingdom come”. That is both permission and incentive from within Christian spirituality, to vigorously, creatively, and joyously join hands with all similar questers, whatever their religious beliefs or unbeliefs. The best of Christian spirituality has been ever inclusive and collaborative, while holding onto the undisputed uniqueness of the Jesus story, which, as *ultimate Story*, points the way home¹².

¹² “Stanley Hauerwas has suggested that the only thing that makes the Christian church different from any other group in society is that the church is the only community that gathers around the true story. It is not the piety, or the sincerity, or the morality of the church that distinguishes us (Christians have no monopoly on virtue). It is the story we treasure, the story from which we derive our identity, our vision, and our values. And for us to do that would be a horrible mistake, if it were not a true story, indeed *the* true story, which exposes the lies, deceptions, and half-truths upon which human beings and human societies so often stake their lot (Marshall, 2000, p. 13.)” J.R.R. Tolkien of *Lord of the Rings* fame, as a philologist has written:

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“In [a true fairy-story] when the sudden 'turn' [Tolkien calls this a 'eucatastrophe'] comes we get a piercing glimpse of joy, and heart's desire, that for a moment passes outside the frame, rends indeed the very web of story, and lets a gleam come through... The Gospels contain a fairy-story, or a story of a larger kind which embraces all the essence of fairy-stories. They contain many marvels... and among the marvels is the greatest and most complete conceivable eucatastrophe. But this story has entered history and the primary world; the desire and aspiration of sub-creation has been raised to the fulfillment of Creation. The Birth of Christ is the eucatastrophe of Man's history. The Resurrection is the eucatastrophe of the story of the Incarnation. This story begins and ends in joy. It has pre-eminently the 'inner consistency of reality'. There is no tale ever told that men would rather find was true, and none which so many sceptical men have accepted as true on its own merits. For the Art of it has the supremely convincing tone of Primary Art, that is, of Creation. To reject it leads either to sadness or to wrath (1966, Epilogue)”.

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