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A BIBLICAL VISION OF JUSTICE

Herman Bianchi

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When I began my research on alternatives to the criminal law system about twenty-five years ago, I was very dissatisfied with what the criminal law system is, and for many reasons.

Then I observed that the Christian religion must have had a great influence on the remarkable fact that we have a criminal law system in our culture. Such a system is not natural because we did not have it before; the Romans did not have it, the middle ages did not have it, other cultures such as African do not have it. So how did it come about? Why do we have it? These were the questions I began to ask myself.

When I did, I realized how much the Christian religion has to do with the fact that western culture --Western Europe and North America--is the only culture in the world that developed a criminal law system. In fact, the first time that you find public prosecution of deviant acts is in the thirteen century with the Inquisition.

I am not going to go into the historical origins in more detail, but simply want to make it very clear that they have to do with religion. The religious roots of the criminal law system are very important, although of course they are not the only ones.

I want to focus now on what sort of concepts have been taken from the Bible to justify the criminal law system.

One of the main concepts which people use to justify a repressive criminal law system is retaliation. Retaliation, retribution, punishment: according to many people, that is what you find when you read the Bible.

So I was confronted with this concept when I began twenty-five years ago. I checked the original Hebrew text in every instance where western translations use the words "retaliation" or "retribution," and I found to my surprise and horror that the origi-

nal words are related to peace, not retaliation. They mean something like "to make peace." Why are they translated into "retaliation?" It is not there! The Lord does not say, "Do not retaliate or revenge yourself; I will retaliate." No, the Lord says "Do not avenge yourself, do not take revenge; I will bring peace." So why do translators use "retaliate?" Why do they fool us? Every time I talk about this I get furious again, I get emotional about it. Why do they do it? I decided to find out.

St. Jerome's translation is the most influential Latin translation and until the present day the official translation of the Roman Catholic Church. St. Jerome lived in the fourth or fifth century, and you might say that he may have made mistakes. He did not really know Hebrew and so he translated the Old Testament from the Greek translation of the original Hebrew, and when you are translating in such a way you may make one mistake after another. The Vulgate is full of that sort of mistake in translation.

But when the Reformation came, the English government in the time of King James promised the nation that they would now get a good translation, the King James Version. And the Dutch government promised a new translation. So we got two official translations, the English one and the Dutch one, and one might expect the mistakes to be corrected. You can imagine my surprise when I read the notes of the committee of learned Hebrew professors who translated the Bible for the Dutch Reformed Church and found that they said, "We have decided to translate Heshlem or Shelem with "retaliate" because people are used to it. They knew they were lying, and still they did it. Remarkable!

From then on I always mistrusted any translation. There are many new translations, but I find only one that is fair and honest. That is the German translation by Martin Buber. He was a Jew, and in this century he translated his Bible, the Old Testament, into German. He created new words when needed. For instance, he did not translate the word t'sedeka into "justice" (the German word is Gerechtigkeit) because it does not have our meaning of justice. Our word "justice" has an entirely different meaning than the

Hebrew biblical concept of justice. The same is true for t'shuvah, which is another concept I will discuss later.

I have been speaking so far about the criminal law system. When I speak about that system, I mean the vast body of the police, district attorneys, courts, prisons, probation--all those thousands and thousands of people who work professionally in what we call in the English language "criminal justice." The phrase is erroneous and almost ironic. Criminal justice is not justice; it is not justice for criminal nor victim, and it is most certainly not t'sedeka.

The Old Testament does not mean that you should retaliate in case of crime; rather, you should bring peace. The beautiful word heshlem or shelem--"bring peace"--we can use, but not "retaliate." The Bible does not speak about it.

And really, how could they have systematically retaliated in those days? There were no police (police came in the eighteenth century), there were no district attorneys. There are only a few signs of "criminal justice" or an organization of justice that we hear a bit about in the Old Testament. One of the kings of Israel was a follower of the law of Moses and appointed judges in the country. Apparently, though, the judges must have been sort of mediators. Now and again the king sat at the gate doing justice to people--like Solomon, for instance. But that sort of wisdom oracles, wisdom statements, is not what we call criminal justice. "Criminal justice" simply did not exist. Instead, they had conflict resolution processes.

The phrase, "an eye for an eye and a tooth for a tooth," again and again is used to justify the criminal law system. But it does not mean what it seems if you look at Martin Buber's translation. The Hebrew text is not literally "an eye for an eye." Buber translates it clearly into German: "an eye for the value of an eye; a tooth for the value of a tooth." There is no historical evidence whatsoever either in Israel or among the Babylonians or the Egyptians that, when something like that is said, a judge would say that the offender should lose an eye when an eye had been violently taken out. There is no historical evidence that this sort of thing ever happened.

"An eye for an eye" just means that when you are dealing with a crime conflict, whether a property theft or an act of violence, you should never demand during the negotiation more than the value of it. If property worth 100 gold coins has been stolen, you are not allowed to demand restitution of 200 coins. Just "an eye for an eye and a tooth for a tooth;" do not ask for two teeth if you have lost one. They always expressed themselves in symbolic language.

To use this concept as a justification for the criminal law system is impossible. In the first place, it is based on a wrong translation, a wrong understanding. In the second place, the Hebrews did not have our criminal law system. Even 2000 years later, when Paul is writing his letters to the Romans or the Corinthians, he has never heard of criminal law because it did not exist. The Romans did not have it either, except in political cases, and when Paul was thrown into jail, it was because he was disturbing public order. He had not committed a crime as such; he was just thrown into jail until the next morning, when he could be thrown out of the city. He was not sentenced to one day in jail or some such, but jail was used as a preventive measure. Because he was a Roman citizen they were not allowed to do that, and that is why the warden of the jail was so scared when Paul said, "I'm a Roman citizen." It had nothing to do with criminal law. No, the usual justifications for criminal law taken from the Bible simply do not hold.

Our Jewish brothers and sisters have always been called the people of the law because they see their religion as a religion of law. Law usually means rules of behavior, but Buber translates the word torah the Jewish word for law, as Weisung rather than as "law." He did not use "law" because he knew that it would lead to misunderstanding because we have very strange ideas of law. The Hebrew word does not mean repression; it is not, "Do that! Don't do that!" No, the law of God is Weisung.

Now the German word Weisung or weisen is a very peculiar word. It is a beautiful word which has a meaning which is also found in the word "indication." The connotation that an English-speaking person has

with "indication" is exactly what a German person feels when he says weisen. Weisung in the first place means wise, and the second meaning it has is "that direction." So a "wise indication" would be the best translation. That is torah.

That is why the Jews were always in endless discussion, in endless palavers, among the rabbis and among neighbors about the interpretation of the law. The law is not "Do that!" or "Don't do that!" No, it is "think about that," "think about this 'indication,' this direction." "Seek in this direction for a solution." That's the nature of the law.

The laws of Moses, the torah, mean a wise indication in the direction you have to go. This is law. Talk about it all the time because you have to find out what it may mean, this indication where you have to go. And this is a never-ending process. It always goes on because we humans have not received from God the power to make a definitive, positive decision. We cannot. That would be just exactly the sin for which Adam and Eve were punished. That is why they did not have judges in order to rule on what is what. We have to talk about it because things change all the time; situations change all the time so we need a lot of people to discuss, to speak about what happened, to discuss whether an act is violence or theft. There have to be discussions. You say, "What has happened is wrong, and in that direction we should try to find a solution." That is law.

Another important problem in translation is presented by the Ten Commandments. The familiar list of imperative "Thou shalt not's" does not fit with the original Hebrew words. The Hebrew words here are not imperatives. They express the future tense. In these passages, "you shall" does not mean, "do that." "Thou shalt not steal" does not mean "do not steal." It does not say that in Hebrew. Look at the beginning of the law of Moses: "I am the Lord your God. When you follow my indications, my law, I will bring you out of the land of Egypt." It is a promise. When you follow my indications, you will not steal anymore. That is the nature of the ten commandments.

This was a revelation to me when I learned it from Martin Buber. He does not translate, "Do not

steal. Do not kill." Rather, when you follow God's indications, you will not kill, you will not steal anymore.

You can say it in a modern way: When we try to love one another in our society, when we try to break down the bureaucracies which have taken everything from us, when we give neighborhoods another chance to live as neighborhoods, then we won't steal anymore, then we won't kill anymore. It is a promise. It is the promised land.

We will never reach that far until the end of the world, but it can be worked at. When small groups of Christians such as Mennonites or Quakers or Catholics really have said, "we are trying to follow God's indications," then there was hardly any criminality. This was not because they were better but because they had this idea that they were going to the promised land and so of course they would not kill or steal any longer.

T'sedeka is a remarkable word. It means much more than our English word "justice." T'sedaka is a noun, but you can also say that it is an adjective. "He is a t'sedek man." T'sedek, t'sedeka, t'sedekia--these are the same word with the same consonants. Very often it is translated as "righteousness." But the people at the court said, "He was a righteous man, he was t'sedek." What did they mean by t'sedek? They did not mean a person without sin, because everyone was a sinner. They did not mean a man who was always doing good things.

Again Martin Buber makes new words because the German word Gerechtigkeit simply misses the whole thing, as does the English word "justice" or the French la justice. These words in European languages have to do with our concept of law, not with "indications." When we make a law, a traffic rule, or that sort of thing, it is not an indication or a law as the old Hebrews meant it. So Buber translates t'sedeka with Bewahrheitung. That is a new word which did not exist before Buber. It means "to bring the truth, to be truthful, to speak truth." To understand this a bit better you can remember the remarkable conversation between Jesus and Pilate. When Pilate asked, "What is truth," Jesus said, "I am truth" because

Bewahrheitung is something you live. It is not something you describe. Justice is something of a personal commitment. Translate t'sedaka in English as "commitment." That is why Jesus said, "I am truth," and not because he was Jesus. Everyone can say "I am truth" when you commit yourself to a just cause and follow the indications of God. When you are personally committed, then you are t'sedek, then you are truth. He did not use the word for truth in Hebrew; he used the word t'sedek.

Buber uses the word Bewahrheitung. Again the word Wahr--truth--is in it. To make things come true. If you promise something and then see to it that it comes true, that the truth of what you said will follow, that is what t'sedeka is; that is justice.

The criminal law system that we have promises us security against criminals. Does it follow through? No. It is not justice. You will remember one of the famous sayings in the Bible, in the New Testament, that a tree shall be judged by its fruit. An apple tree that produces apples is a real apple tree. An apple tree that does not produce apples is worthless and you throw it out into the fire. That is what the text says, and quite rightly so. A criminal law system that does not bring justice is like an apple tree that does not produce apples. The criminal law system does not produce justice and does not produce security. On the contrary, it provokes criminality: the prison system produces criminals, then throws them into society. The phrase "criminal justice" is an abomination. You should abolish it. It is nonsensical, absurd and, religiously speaking, a forbidden expression.

T'sedeka is what you should try to invent if you want to follow the indication to create a system that brings truth, that brings justice. You are not doing justice. No, you bring justice eventually, and the tree shall be judged after its fruit. The Romans, to the contrary, had a saying that "even if the result is absent, you should praise the intention." This was said first by the philosopher Seneca. So the will or intent should be praised, even if the results are absent. But why should you praise an apple tree for its will to produce apples if it is not producing any?

Similarly, you should praise a legal system for its fruits. Many judges say, "We are doing our best but we shouldn't be utopian. We try to make prisons as humane as possible." I ask, "What are your fruits? None? Then why should I praise you? The fruits are in fact criminality and if that is your intention, then you are yourself a criminal. If that is not your intention, then I am not going to praise you because you do not produce fruit." That's t'sedeka. That's a biblical vision of justice.

Now I come to a very important word, and that is t'shuvah. T'shuvah has been translated often as "conversion." It means a standstill. Buber translates it very often with "halt." You can also translate it as "repentance." It means "It's going wrong, so stop for a moment. Something has to be done. What? We will see, we will talk about it, we will find a solution, we will find good fruit. But it's wrong--stop."

We find many Old Testament texts where it is said that this or that happened and then God t'shuvah, repented what he had done, so he made a 180 degree turn and did another thing. That's t'shuvah. You can call it repentance or conversion, but what it means is that people are doing their thing and then suddenly there is a shock. It's wrong, and you may have a shock by yourself because you become aware of it yourself. "I am on the wrong path; I am doing wrong things." I like a good glass of wine now and again, but a couple of years ago I suddenly discovered that I was gradually drinking a few glasses too many during the week. Then "Stop; I am not going to drink for half a year. If I don't stop, eventually I will become an alcoholic." That is t'shuvah, that is repentance: the shock--stop for a moment, don't drink for a moment, you are going too far. Call it "repentance," call it "stop." Stop a moment, think what is going on and what is to be done. What you need is not so much that someone present you with a criminal court decision and sends you to prison. No, you need someone who says "Stop!" If sometimes a little bit of power is necessary to make you aware that you should say "stop," alright, but "stop" should be said as well as "What are we going to do now? That road is wrong. You may have done harm and you have to repair it

because it is the wrong way. The indication is another way. We have to discuss it."

It may be very difficult sometimes to say stop to yourself, and if other people tell you to stop it may be hard. But you need other people to discuss it with. That is a biblical vision. The only thing I demand of a legal system is that it say, "Stop, this is the wrong way, and you have to find another way. If harm has been done, you have to repair it."

Often repentance is present today, but it is killed by the criminal law system if you are sent to jail and do not get the possibility to say "stop" to yourself. The prison says "stop," but you do not get the opportunity to go another way. Instead, you simply have to stay there for five or ten or fifteen years instead of receiving the possibility of going another way. That is why it is a wrong system. That is why it produces no fruit, and that is why the tree should be torn out and thrown into the fire, if we speak biblical language.

We must understand the concept of law as the Bible understands it, and not as our legal system understands it. Of course we should have law; in complex modern society, we need it. We must say "stop." But this legal system has to be interpreted according to these two concepts--t'sedeka and t'shuvah--and t'shuvah always means an opening to the future.

OTHER PRINTED MATERIAL

Crime, Pain and Death by Nils Christie. Issue No. 1 of the "Occasional Papers."

Who is My Neighbor: Learning to Care for Victims of Crime by Howard Zehr.

Life After Prison by Al Wengerd. New edition to be released shortly.

Mediating the Victim Offender Conflict by Howard Zehr.

The Christian as Victim by Howard Zehr.

Death as a Penalty: A Moral, Practical and Theological Discussion by Howard Zehr.

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