*From the U.S.A.*

# "JUSTICE, JUSTICE THOU SHALT PURSUE"

## DIVINE AND HUMAN JUSTICE IN A CORRECTIONAL CONTEXT

**by Jens Soering**

Those who labour in the rocky vineyard of prison ministry know that many inmates are deeply interested in the subject of justice. On a prosaic level, almost all prisoners have strong opinions about the criminal justice system that judged and incarcerated them, of course. And those inmates who choose to participate in religious programs often have questions about Christian concepts of justice.

If God so loved the world that he gave his only begotten Son, why does the Bible speak so frequently of a harsh, punitive deity? If the "Good News" that Jesus brought is that we are all forgiven, why do so many Christians seem to be judgmental and merciless? If I am truly sorry, and if God has forgiven me, then how can it be just for man's justice system to continue imprisoning me? These are the kinds of questions that chaplains and prison ministers often hear — or, rather, that they would often hear, if they gave inmates the opportunity to voice their concerns.

Conducting Bible studies and group discussions about God's and man's justice can be a highly effective way to deepen the faith of prisoners — and of religious staff and volunteers, too! Below are some reflections and themes that may prove useful when developing a program of this type for an incarcerated congregation. As an opening question, we might ask: what exactly do we think divine justice demands?

### Retribution and restoration

Most of us favour the "eye for an eye" school of thought in these matters, much like the author of this letter-to-the-editor of USA Today:

> My religion preaches, "Justice, justice thou shalt pursue." In looking at the Scott Peterson case, one wonders where that justice is. ... The death row inmate is never subjected to any horror or

> misery comparable to what he mercilessly meted out to his victims. ... It is regrettable that we'll have to wait perhaps two decades for the death sentence to be carried out.[1]

When a convicted criminal lays claim to God's forgiveness through faith in Christ, our human sense of justice is offended, even outraged. Jeffrey Dahmer's jailhouse conversion, for instance, earned this reaction from journalist Bob Lonsberry:

> Did you hear he got religion? He made his peace with his maker. Lucky for him we have different makers. I think mine requires a little more than a prison conversion and a dunk in the pool to make up for butchering a dozen and a half innocent people. ... Why is it these dogs never get religion before they slaughter people? Why does it always come too late to do anybody any good? Whose side would God be on? Who does he welcome on judgment day? Are we supposed to believe that God embraces the murderer and sends the victim to hell? — Not in any heaven I want to be part of.[2]

As scholar and author Walter Wink has pointed out, the Old Testament provides plenty of support for this point of view:

> There are six hundred passages of explicit violence in the Hebrew Bible, one thousand verses where God's own violent actions of punishment are described, a hundred passages where Yahweh expressly commands others to kill, … Retributive violence is easily the most mentioned activity and central theme of the Hebrew Bible.[3]

Nor does this theme disappear entirely in the New Testament: the Book of Revelation, as well as some of the Epistles, speaks of God's violent judgment of a deliberately sinful humanity.

But if divine justice were to consist of nothing more than pitiless retribution, what do we make of the hundreds of instances of and references to God's mercy and forgiveness in the Old and New Testaments? [4] How can Christ explicitly reject the Old Testament's "eye for an eye" and command us instead to "offer no resistance to the one who is evil [and] turn the other cheek" (Exodus 21: 24; Matthew 5: 39)? Is God the Son being untrue to God the Father when "mercy triumphs over judgment" (James 2: 13)?

Of course not. The key to resolving the apparent contradiction between "mercy [and] judgment" is that Godly punishment always has a restorative purpose, as both King Solomon and the author of the Letter to the Hebrews emphasized:

> My son, do not disdain the discipline of the Lord
> or lose heart when reproved by him;
> for whom the Lord loves, he disciplines;
> he scourges every son he acknowledges..
> (Proverbs 3: 11-12; Hebrews 12: 5-6)[5]

Thus punishment is not a *retributive* balancing-of-the-scales, a repayment of one evil for another, but a kind of gift from God "for our benefit" – the benefit of the offender (Hebrews12: 11)! "At the time, all discipline seems a cause not for joy but for pain," our Scriptural author acknowledges (Hebrews 12: 11). But to end our examination of divine justice with that "pain" is to miss the whole point: "later it brings the peaceful fruit of righteousness to those who are trained by it" (Hebrews 12: 11). "Punishments are meant to be medicinal," St. Thomas Aquinas says. "The primary aim of punishment must be to achieve some good, either the sinner's correction, or at least his restraint so that others may enjoy peace and justice be defended and God honored."[6]

Of course the restorative purpose and function of punishment is not some quirky New Testament innovation of our Father's but the central, if often overlooked motif of Old Testament justice as well. "Though Yahweh punishes sinners, there is no text in the Old Testament where his justice is equated with vengeance on the sinner," notes Professor J.R. Donahue, of the Jesuit School of Theology and the Graduate Theological Union. "Yahweh's justice is saving justice, where punishment of the sinner is an integral part of restoration."[7]

On the individual level, too, ancient Israelite legislation on non-capital crimes usually aimed at "restoration," not mere retaliation: "since he has incurred guilt by his sin, [he shall] restore the thing that was stolen or unjustly retained" or even "restore his ill-gotten goods in full, and in addition give one-fifth of their value to the one he has wronged" (Leviticus 5: 22; Numbers 5: 5, 6). Professor Christopher Marshall, of Victoria University, Wellington, sees laws like this in the context of Old Testament "social justice" concerns, such as care for widows, orphans, aliens, and the poor, the remission of debts, the manumission of slaves, and the protection of land rights. In this

connection, covenant justice could be understood as positive succour for, and intervention on behalf of, the poor and the oppressed.[8]

Unfortunately, that concept of Godly justice was no more popular in ancient Israel than it is today, as the prophet Zechariah noted with dismay:

> Thus says the Lord of hosts: "Render true judgment, and show kindness and compassion toward each other. Do not oppress the widow or the orphan, the alien or the poor; do not plot evil against one another in your hearts." But they refused to listen and made their hearts diamond-hard so as not to hear the teaching and the message.
>
> (Zechariah 7: 9-12) [9]

**Capital punishment**

Even in the Pentateuch's legislation on capital crimes, the primary goal was not the punishment of the perpetrator but the restoration of *shalom*, the peace of the community, through ritual purification. "Thus shall you purge the evil from your midst" is a refrain that follows virtually every invocation of the death penalty in the Book of Deuteronomy, for instance (Deuteronomy 13: 1).[10] By requiring the execution to be carried out beyond "your city gates" with all of "the people" throwing stones, Hebrew jurisprudence further emphasized the cultic, religious role of capital punishment (Deuteronomy 17: 5, 13: 10).[11]

As an interesting aside, we should note here that pro-death penalty arguments based on the Old Testament usually ignore the fact that executing an offender was an act of ritual purification. Before God's Son sacrificed himself for us, it was indeed true that "the land can have no atonement for the blood shed on it except through the blood of him who shed it" (Numbers 35: 33). But "we have now received reconciliation [or: atonement]" through Jesus and are "justified by his blood" (Romans 5: 11, 9). Unless we are willing to take on the entire system of Hebraic cleansing rituals again, we cannot pick out one of those rituals — capital punishment — and justify its use by appealing to the Mosaic Code.

Let us take a closer look at one of the primary texts cited by advocates of execution:

Matthew 5: 8, in which Christ says that "not one jot or tittle" of the Mosaic Code would pass away. This, they argue, means that the Pentateuchal laws on capital punishment do still hold. When Jesus abolished the "eye for an

eye" of the lex talionis, he must have meant only private acts of vengeance, not the lawful use of the death penalty (Matthew 5: 38-39).

What this argument overlooks is the fact that in the "jot or tittle" passage, Jesus announced he had come to "fulfil" Pentateuchal law — and according to Webster's, "fulfil" means "to satisfy the requirements or obligations of"' (Matthew 5: 17). Christ's final atoning sacrifice on the cross satisfied the requirements and obligations of the Law of Moses and thus made "an eye for an eye" superfluous. For all the "eyes" in the world and in history, Jesus has paid with his own "eye."

**Transcending the scales of justice**

On the cross, Christ "*abolished* the law with its commandments and legal claims" — a significant choice of words, since it implies that the normal categories of justice were transcended (Ephesians 2: 15, emphasis added). Sinful humanity did indeed win an "acquittal" on Calvary — but through a "gift, ... one righteous act," not through an ordinary trial and judgment (Romans 5: 16, 18). Instead of paying off the debt we humans had incurred, our Saviour took the bill and tore it to shreds: he "*obliterated* the bond against us, with its legal claims, which was opposed to us, ... removing it from our midst, nailing it to the cross" (Colossians 2: 14, emphasis added).

Yet it was Paul's use of judicial metaphors to explain the crucifixion that caused so much confusion over the centuries. As Marshall explains, "many of the Latin Fathers were lawyers and so were predisposed to conceive of divine-human relationships in terms of legal obligations, as operative in the Greco-Roman tradition.[12] The Romans, of course, did not conceive of justice as the restoration of *shalom* by "obliterating the bond against us," but as the goddess Themis balancing her scales of justice.

Outside many American courthouses, we find statues of Themis wearing a blindfold and carrying a sword and scales. She has seeped into our culture so thoroughly that we no longer realize we are committing a form of idol-worship inside those courthouses. As serious and dedicated a Christian as Charles Colson, founder of Prison Fellowship Ministries, justifies the death penalty as necessary to "balance the scales of moral justice which have been disturbed" by premeditated murder.[13] Those scales are nowhere to be found in Scripture, however.

In the New Testament, scales or balances are mentioned only once: in Revelation 6:5, where death (not God) carries them to measure out starvation

rations during the end times. The Old Testament uses *mozen*, or balances, fifteen times, almost always in reference to merchants cheating their customers; one exception is a beautiful poetic image in Isaiah 40: 12 that describes our Creator's sovereignty. In only one passage, Job 31: 6, do we find the man of sorrows complaining, "Let God weigh me in the scales of justice; thus will he know my innocence!"

But that is precisely what God refuses to do; in fact, the whole Book of Job is one long refutation of man's attempt to impose his sense of right and wrong on our Creator's actions! "Who is this that obscures divine plans with words of ignorance?" asks God. "Where were you when I founded the earth" (Job 38: 2, 4)? Impartial scales were never our God's symbol of justice — not in Job's time, nor in Paul's, nor in the Latin Fathers'.

**Three theories of atonement**

Because most of us do not like having to depend on a mysterious Creator's inexplicable mercy any more than Job did, however, we keep sneaking back to the altar of Themis to borrow her nice, easy-to-use, "fair" scales. St. Anselm of Canterbury even used the concept of justice-as-a-metaphysical-balancing-act to explain how the cross freed us from sin, in what is called the "satisfaction" theory of atonement. According to Professor Harold J. Berman of Emory University and Harvard University, Anselm's *Cur Deus Homo* describes God as

> bound by his own justice. If it is divinely just for a man to pay the price for his sins, it would be unjust, and therefore impossible, for God to remit the price.[14]

Under this view of the cross, Christ actually *satisfied* God's demand for payment, instead of "*obliterating* the bond against us, with its legal claims" (Colossians 2: 14, emphasis added). His death balanced out our sins, as it were.

In the hands of the Protestant Reformation, Anselm's "satisfaction" theory became the "penal substitution" theory. "Our guilt and its punishment were imposed on Christ, and his righteousness was imputed to us," Marshall summarizes this thesis. Significantly, "in popular Christian thought, some version of penal substitution remains the dominant form of explaining — and proclaiming — the work of the cross.[15] Of course this idea of weighing our guilt in one scale against Jesus' righteousness in the other scale is very far from Christian indeed

But the theory of "penal substitution" along with its image of God as a "hangin' judge" who insists on stiff retributive punishment — had a profound impact on the way Western criminal justice systems developed. "As this theory entered the cultural bloodstream, ... harsher punishment was demanded because God himself had demanded the death of his son," according to Professor Timothy Gorringe of Exeter University.[16] This had direct and detrimental effects on courts and prisons: "wherever Calvinism spread, punitive sentencing followed."[17]

There are, of course, some very obvious logical problems with both the "satisfaction" and the "penal substitution" models. Under both of these theories, atonement is seen as a forensic transaction in which God the Father acts both *in* God the Son (2 Corinthians 5: 19) and *against* him, all at the same time. Moreover, God the Son essentially saves us not from the devil, say, but from God the Father, who is eager to send us to hell. And if God really is "bound by his own justice" *compelled* to punish *some*body for humanity's sins - can he still be said to be an omnipotent deity?

Only in recent decades have some theologians begun to resolve such contradictions by studying the distorting effect that the Latin Fathers' Greco-Roman model of justice had on our Christian atonement theories. In order properly to understand "Paul's theology of justifying righteousness," for instance, it "is crucial to recognize that it is constructed on Jewish rather than Greco-Roman presuppositions," Professor J.D.G. Dunn of the University of Durham tells us.[18] Thus when Paul speaks of Jesus dying "for us" and "for our sins," as he so often does, the operative model is the ancient Israelite scapegoat ceremony, not the scales of Themis (1 Corinthians 15: 3; 1 Thessalonians 5: 10).[19] Jesus died *on behalf* of us (our corporate representative), not *instead* of us (our penal substitute).

By grounding his understanding of the cross on Hebrew concepts of covenant and relationship rather than on the Greco-Roman idea of metaphysical justice, Marshall arrives at the "redemptive solidarity" theory of atonement:

> Christ suffers the penalty of sin not because God transfers our punishment onto him as a substitute victim, but because Christ fully and freely identifies himself with the plight and destiny of sinful humanity under the reign of death and pays the price for doing so. The thought is not one of legal imputation of guilt to Christ but of Christ's costly solidarity with humanity in its shameful and culpable condition.[20]

If the crucifixion is indeed not an act of punishment demanded by a stem Judge, but a loving Father's way of restoring a broken covenant, then our view of divine justice generally must change, too. The cross reveals that God does not seek to give each person precisely that punishment which he or she deserves; instead, he makes any sacrifice necessary to heal his damaged relationship with us. Translated to the human level, this means that true, divine "justice is about promoting the fellowship of the human race, and about furthering community," as St. Ambrose explains in *De Officiis*.

So what of our human criminal justice system? Is "furthering community" and restoring *shalom* the aim of our prisons? Or do they embody the "eye for an eye" spirit of ancient Israelite cleansing rituals?

In fact, what of the concept of incarceration itself? Does God's justice allow the caging of his beloved sons and daughters at all? Teacher, author and social activist Lee Griffith puts this issue in beguilingly simple terms:

Ultimately, there are not two kingdoms but one — the kingdom of God. ... "Freedom to the captives" is not proclaimed by Christ in some other world but in our world (Luke 4: 18). 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.[21]

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**Notes**:

1 Oren M. Spiegler (Upper Saint Clair, Pa.), "Letters," *USA Today*, March 22, 2005. (Scott Peterson was convicted in 2005 of murdering his wife Laci while she was pregnant with their son.)

2 Bob Lonsberry, *The Early Years*, (New York: Canisteo Free Press, 1995), quoted in Ronald Nikkel, "In the Company of Scoundrels," *Justice Reflections* (U.K.), Nr. 49, p. 16(© 2004 by Prison Fellowship International). (Jeffrey Dahmer was convicted of murdering seventeen people and eating parts of their corpses.)

3 Walter Wink, *Engaging the Powers: Discernment and Resistance in a World of Domination*, Philadelphia: Fortress Press, 1992), p. 146.

4 For example: Exodus 34: 6, 7; Psalms 103: 3, 10; Ezekiel 33: 11; Micah 7: 18; Matthew 5: 7; 9: 13; 12: 7; Luke 10: 37.

For these scriptural references, as well as those in endnotes 9, 10, 11 and 19, I am indebted to Christopher Marshall's *Beyond Retribution*, cited below.

5 Cf. Deuteronomy 8: 5; 1 Corinthians 11: 21.

6 St. Thomas Aquinas, *Summa Theologicae*: *A Concise Translation*, Fathers of the English Dominican Province, trans., (Allen, TX: Christian Classics, 1947), p. 418.

7 J.R. Donahue, "Biblical Perspectives on Justice," in *The Faith That Does Justice — Examining the Christian Sources for Social Change*, ed. J.C. Haughey, (New York: Paulist Press, 1977), p. 72; see also Gerhard von Rad, *Old Testament Theology*, 2 vols, (London: SCM, 1962), p. 377.

8 Christopher Marshall, *Beyond Retribution — A New Testament Vision for Justice, Crime and Punishment*, (Grand Rapids, MI: Eerdmans Pub. Co., 2001), p. 48.

9 Cf. Exodus 22: 21-26; 23: 6-9; Deuteronomy 24: 17, 18; Psalms 82: 3; Isaiah 1: 17; Jeremiah 21: 12; 22: 3.

10 Cf. Deuteronomy 17: 7, 12; 19: 19; 21: 21; 22: 21-22; 24; 24:7; and Judges 20: 13; 2 Samuel 19: 3.

11 Leviticus 20: 2; 24: 14, 23; Numbers 15: 35-56; Deuteronomy 21: 19, 21; Joshua 7: 25; 1 Kings 12: 18; 21: 10, 13; 2 Chronicles 10: 18.

12 Marshall, *Beyond Retribution*, p. 43.

13 Charles Colson, "Colson on Jesus and the death penalty," *Jesus Journal.com*, September 6, 2004, p.6.

14 Harold J. Berman, *Law and Revolution — The Foundation of the Western Legal Tradition*, (Cambridge: Cambridge University Press, 1983 (reprint)), p. 180.

15 Marshall, *Beyond Retribution*, p. 60.

16 Timothy Gorringe, *God's Just Vengeance — Crime, Violence and the Rhetoric of Salvation*, (Cambridge: Cambridge University Press, 1996), p. 102.

17 Gorringe, *God's Just Vengeance*, p. 140.

18 J.D.G. Dunn, *The Theology of Paul the Apostle*, (Edinburgh: T & T Clark, 1998), p. 342.

19 Cf. Romans 5: 6, 8; 2 Corinthians 1: 5; 5: 14; Galatians 3: 13; Ephesians 5: 2; Titus 2: 14.

20 Marshall, *Beyond Retribution*, p. 62.

21 Lee Griffith, *The Fall of the Prison — Biblical Perspectives on Prison Abolition*, (Grand Rapids, MI: Eerdmans Pub. Co., 1993), p. 28.