

BOOK REVIEW: COMPASSIONATE JUSTICE

by Robert Shaw

Dedication: *This article has been written to mark the retirement of Professor Chris Marshall, the inaugural holder of the Diana Unwin Chair in Restorative Justice at the Victoria University of Wellington, from the Chair.*

I first came across the work of Chris Marshall when a chaplain lent me *Beyond retribution* (Marshall, 2001); in 2005 some friends in New Zealand sent me a tape of Chris preaching on the subject of his article Satisfying justice (Marshall, 2005) which concludes with one of the best summaries on the needs of victims, to which I have repeatedly returned in my work with victims to understand how best to help them to deal with their circumstances.

Chris's writing exemplifies the best in any writing, not just Christian writing: the ability to relate teaching to practice in a way which makes sense both of the teaching and of best practice. *Compassionate justice* stands in the line of a great tradition, of studying both the 'book of nature' and the 'book of God' for a complete revelation, which fell out of favour in the twentieth century. It came from Thomas Aquinas (Capra and Luisi, 2014), and was the standard position two centuries ago.

From the beginning, the Royal Society insisted that Nature must be studied closely, since it is God's other book, alongside Scripture
(Bragg, 2010).

Chris presents *Compassionate justice* in three parts: the story of the good Samaritan, the story of the prodigal son and just compassion. In the first part, he starts from uses made of the parable by Dr Martin Luther King Jr to explore the cultural legacy of the parable before looking at the parable in detail, considering the many and varied arguments of all those who prefer

not to see it as it appears at first hand: practical advice on how to live a Christian life. From this he draws out four features of the parable: a focus on victimisation, a duty of care for victims, a legal perspective and the absence of a binary classification into good and evil, victim and offender.

He considers the scriptural background to the conflation of the commands to love God and to love our neighbour and Jesus' focus on love rather than on a particular definition of neighbour. He examines modern evidence on the experience of victimisation in the light of the experiences of the victim in the parable and on the considerations which might have passed through the minds of the priest and the Levite as they passed by on the other side in the light of what modern studies of responses to victimhood tell us.

He examines the contrasting response of the Samaritan, highlighting the deep feelings which arose in the Samaritan towards the victim and then the expression of those feelings in a series of actions which modern evidence suggests go most of, if not all, the way to meeting a victim's needs. He notes the lawyer's acknowledgement of the Samaritan's actions as constituting a real fulfilment of the law.

He then turns to the differing perspectives of Jesus and most of those with whom He discussed legal questions:

[Jesus] feared that the process of interpretation favored by them could have a dehumanizing effect on the law, a loss of emphasis on the actual human consequences of decision making (p. 145).

Similar differing perspectives, focusing on the one hand on 'behavioural correctness' and on the other on 'consequences,' can be seen in Indian culture (Sen, 2009) and are explored in two of Shakespeare's plays, *The Merchant of Venice* and *Measure for measure*. But, as Sen observes, Western culture has preferred 'transcendental justice,' as exemplified in Locke and his successors (Rawls, 1971), which may help to explain why common law justice systems have been so reluctant to adopt 'good Samaritan' or 'bad Samaritan' legislation.

The discussion of the role of distance in giving assistance has been brought into sharp focus more recently by global warming and the Covid-19 pandemic. Environmentalists have long argued that what one person does in one part of the globe can have an adverse effect on someone else on the other side of the globe while the Covid-19 pandemic has highlighted how many of our daily activities interconnect us with people on the other side of the world.

Both John, the Baptist, and Jesus called their followers *metanoein*, to think about things differently. Chris not only draws attention to the practical needs of victims which Jesus illustrates in the parable but also to our need to think about the world in a different way if we are not to create more victims, whether through global warming, unhelpful responses to the Covid-19 pandemic or limiting the scope of our individual action in response to the needs of another. He demonstrates that both the parable and the legal framework from which Jesus presented it are as relevant to us today as they were to helping the lawyer to think through his legal question.

Turning to the parable of the prodigal son, Chris argues that this can be seen as a parable of restoring justice if we understand the offences of the younger son as ripping through the fabric of Palestinian society to an extent which Jewish law considered punishable by death. But the reaction of the younger son to his predicament also illustrates the stages which any offender must go through: contrition, acceptance of responsibility for his situation, recognition of the harm he has caused, recognition that the offence has changed the nature of his relationship with the victim and a determination to act differently in future.

He notes that in an age when individuality and self-determination are highly valued, it may be difficult to see the younger son's behaviour as so reprehensible. However, our identities are formed not in independence but in interdependence. Those who lack relationships are more likely to suffer mental illness (Brugha et al., 1993) while those who are most likely to be successful in life are those who have experienced unconditional love, whether as an infant or later in life (Ladd, 2005). Indeed, overwhelming unconditional love is the only known, and complete, cure for severe abuse (Kadushin, 1970; Koluchová, 1976).

The idea that we are all bound in relationship was memorably expressed by (Donne, 1624, Meditation 17; quoted by Marshall p. 242); so characterising the younger son's offending as a relational rupture representative of all offending makes sense of our understanding of human beings, not just of offending.

Chris reminds us that the father's behaviour would have diminished his honour in a Palestinian community and that is the experience of many who have family or friends in prison or support particular groups of prisoners, such as child murderers and those accused of sex offences.

He explores the significance of the younger son 'coming to himself.' Prisoners convicted of serious offences who shared this experience with me described how, at the time of the offence, they could not see any other way of behaving and how the process of 'coming to themselves' involved recognising that there had been an alternative way of behaving at the time of the offence which they had not recognised but now recognised, often several years later. In other words, they described a process of *metanoia*, of changing the way they thought about the offence, which was the first step towards accepting personal responsibility rather than believing that they had had no choice in the circumstances and regretting any harm that might have occurred but not accepting any personal responsibility for that harm.

Accepting personal responsibility normally results in lower self-esteem and great anxiety about the relationships that will now be available to you, both reflected in the younger son's decision to ask for a 'zero hours' contract from his father. The father's unfailing unconditional love, in which there is no lowering of esteem and no change in the available relationship, is in the end the only way in which an offender can be fully restored to society. As Chris points out, the father takes great pains to publicise to the local community that his son has been fully restored to a place of honour in the family as his son.

Chris suggests that the older brother, who protests at the unfairness of lavishing all this expense on his profligate younger brother, represents the common response of the community to any hint of leniency towards

offenders. Both Gilligan (1993) and Wolins (1973) argue that the development of moral thought moves through a number of stages towards a morality based on concern for the other but that, on the way, it goes through a stage when conventional morality informs moral thought. Moreover, the impetus to move to the next stage is usually prompted by encountering a moral dilemma which cannot be explained within the person's current moral framework. So there are always people in the community who view everything through the lens of conventional morality and, if they do not encounter a situation which prompts them to question their conventional morality, they have no motivation to move on from this stage.

Though the older brother may appeal to tenets of conventional morality, in terms of the frameworks set out by Gilligan and Wolins, he is at an even earlier stage in moral development and his father's response is to appeal to a more developed, relational, morality.

The question which Chris addresses in the third part is whether a more developed, relational, morality can inform the decisions of a justice system. He begins by looking at the place of compassion in justice. As he points out, compassion inevitably involves emotion and the conventional Western view of justice is that it cannot be a place for emotion; but this ignores the scientific evidence that none of our decisions are free from emotion (Prigogine and Stengers, 1984). Our task, therefore, is not to pretend that we can remove emotion from our decisions but to understand, and be open about, the emotions which are influencing our decisions.

I share Chris's reservations about excluding people from compassion even when their suffering is '*richly deserved*' for both intellectual and practical reasons. In the 18th century Jonas Hanway banned staff of the Magdalen Hospital from discussing anything of the residents' past (Taylor, 1985) and, since we can never reliably know the causes of a current situation (Prigogine and Stengers, 1984), the only reasonable decisions we can take are based on what is happening in the present. Interestingly, this principle has been incorporated in the European Union's General Data Protection Regulation which bans the making of decisions

on historical personal data and in the 2019 Parole Board Rules which only permit the judge's comments at the original sentencing to be taken into account; all other personal data must be 'current.'

From a practical point of view, once I had come to be trusted by prison officers, I was on several occasions asked to look after prisoners sentenced for their first offence, who would disclose the most gut-wrenching detail about their offences, detail which, if disclosed to certain other prisoners, would have led to their permanent victimisation within the prison system. There was no question for me of allowing that material, however distressing, to interfere with responding compassionately to them.

Taking my cue from these two parables I see compassion as an emotion arising deep from within people when they are encounter a situation but one which only arises if there is unconditional love within the person, something which is itself dependent on experiencing it from another (Ladd, 2005) and on its continuing nourishment. Those who try to care for others without nourishment and self care eventually run out of the emotional resources needed to care and in some cases become abusive because they have no love left to give. Jesus spoke of 'power' going out of him (Lk 8:46) and He frequently retreated to pray, particularly after a long day with people.

A volunteer lifeboatperson who trains to be available in an emergency exemplifies 'You will love your neighbour as yourself' perfectly. Unless they take real care over their training and preparation for an emergency so that they can ensure that they will return safely, they are of no use to the casualty. But they have to respond with compassion throughout however stupid the casualty may have been to put their own life and those of others in danger. Compassion takes over and volunteers take enormous, but calculated, risks based on their training and experience.

In thinking about a compassionate justice system, we first have to have in place an unconditionally loving justice system, one which does not calculate how stupid the victim was or how reckless the offender was but finds ways to respond to the situation both find themselves in with love, not just for them but for their families and their communities, because relational ruptures can only be healed with love.

Having set out his arguments for compassion in justice, Chris turns to its potential limitations: perspective, predisposition and proportion. Following Vickers (1983), who argued that all human beings have an individual ‘appreciative system’ of facts and values which is developed as a result of the interacting ideas and events which they encounter, I would argue that the first two apply to everything we do and therefore are limitations of every single human action, not just of compassion.

Proportionality is an important legal consideration, certainly within common law systems, but it is just that, a consideration, not the be all and end all of justice. In its simplest articulation in the ancient world, ‘an eye for eye and a tooth for a tooth’ was a proportionate limit on the vengeance a victim could take on the offender. It was the criterion for measuring an unjust outcome, not the criterion for measuring a just outcome.

But a key feature of unconditional love and compassion is that they do not ‘count the cost’ except in the sense that there is, with very few, extreme, exceptions, no point in killing yourself. The volunteer lifeboatperson does not count the cost of their compassion, except insofar as they do not plan to die in the effort, any more than Emma Woods did (pp. 300-301); they respond to the situation which is before them.

Chris then considers the arguments of Acorn (2004) against restorative justice. The first, that it did not live up to its promise, is not unusual. Shapland et al. (2007, pp. 46-47) found that 3% of victims and 4% of offenders were dissatisfied with the process overall. The second, that its ‘dewy-eyed’ approach derives from ‘soft religion,’ may or may not be true of restorative justice in the modern West but ignores the fact that restorative practices were present in a great many indigenous cultures across the world before being replaced by Western colonial ‘transcendental justice.’

He deals at length with her critique of restorative justice as bringing a ‘right relation’ and with the introduction of love into justice before considering the conditions which she believes are needed: a recognition of the complexity of the inner life of the other, the need for mutuality of compassion and the need for compassion to be grounded in humility, from

which she concludes that ‘compulsory compassion’ is unviable. The two parables do not however describe compassion as ‘compulsory’ but as an emotion arising from deep within people.

Moreover, victims overwhelmingly do not choose to use the legal system but the support of family and friends (European Union Agency for Fundamental Rights, 2014) suggesting that there is an untapped well of love and compassion in the community for those who have access to this support. Also, the fact that the European Parliament and Council (2012) felt it necessary to set standards for the ‘rights, support and protection of victims of crime’ suggests that justice systems are far from compassionate in their treatment of victims.

In the end, these two parables offer a blueprint for a compassionate justice system: one which deals with both the victim and the offender compassionately in the situation in which they find themselves. It does not matter whether the victim or the offender end up in a right relation with each other (the good Samaritan does not suggest that he is going to continue to have a relationship with the victim who, in turn, is unlikely to have a future relationship with his assailants); it does matter that they end up in a right relationship with their families and communities - the point of the parable of the prodigal son. Both victim and offender have to come to terms with the situation which they shared and, whether or not they are able to reach a ‘right relation’ between themselves, create some new ‘right relations’ with their families and communities which will enable them to carry on with their lives. A compassionate justice system facilitates that for both, whether it does it through restorative justice or through another means.

I have picked out some of the themes of this book, drawn from the ‘book of nature’ and the ‘book of God,’ which jump out at me today but they are unlikely to be the same as those which will jump out at you. With both ‘books’ as its source, this book is unlikely to disappoint, whatever the situation in which you find yourself.

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