

ABSTRACT

Christians have understood the link between the Old Testament, with its seeming emphasis on law, and the New Testament, with its seeming emphasis on grace, in a number of different ways. One reading, however, understands the Old Testament to record the history of the failure and inadequacy of God-given law to achieve true justice and the necessity for the work of the Son and the Spirit to form a holy people for God.

On this reading, Christianity is to be understood as teaching that justice must be internalised. Law which is expressed as rules governing external behaviour has therefore a limited role to play in the pursuit of justice. Legal rights and obligations create a framework of expectations within which justice may be pursued.

Christianity also claims that God is relational; it dares to call God Father. Obedience to God’s rules is an aspect of relationship to God. Relationships may therefore be understood as having a certain ontological priority over law, over rules.

Hence Christianity offers an explanation of justice, which is consistent with the development of emerging forms of dispute resolution, such as restorative justice in the criminal sphere and mediation and conciliation in the area of civil disputes.

Introduction

Let me begin with some introductions and explanations. I am, and have been, since 1995, a practising barrister. That is my job, that is how I earn most of my money. I am also a Christian theologian with a specialist interest in the theology of law. My two major pieces of research so far have been on how the Christian scriptures might be read as offering a coherent narrative understanding of the role of law in human affairs and on how the Christian understanding of God as Father, Son and Holy Spirit shapes or ought to shape Christian approaches to law.

With that by way of introduction, let me offer a few words of explanation. I am not an expert in either Islam or Judaism. This paper is not a paper in comparative theology. I seek only to outline a relational approach to justice from resources within the Christian tradition.

In the UK, the relational approach to justice has been pioneered by the Jubilee Centre in Cambridge. It is an approach to the practice of litigation, particularly applied to criminal litigation, which asserts that relationships rather than rights are primary.

Relational justice as a paradigm within Christian theology

I want to identify briefly a triad of theological resources for understanding justice as relational:

- 1) the Torah provides a relational paradigm for justice;
- 2) the Christian understanding of God as triune means that relationships are fundamental;
- 3) the teaching of Jesus emphasised right relationships as more important than abstract rights.

1) The Torah's relational paradigm for justice:

Regina Schwartz, in a volume of deconstructionist essays, argues that what is unique about the Giving of the Law as described in Exodus 32 is that the law is here identified with justice.¹ She is right, but in that essay does not adequately explore why this is so. Certainly Christian scholars have been guilty of misunderstanding the Torah, treating it as a statute-book. Jonathan Burnside and Bernard Jackson have argued convincingly that it is more akin to a judicial training manual, setting out paradigm cases to guide judicial reflection on the scenarios which they had to determine.² In fact, even more than that, the Torah is a guide for the Israelites, an ethical manual to be meditated upon by the whole community (see Deuteronomy 6:6-9), designed to be capable of application by the people themselves without the need for a specialist cadre of judges.³ The ideal is that a community which lives its law will not need judges to resolve disputes because people will live wisely by the Torah, in *shalom* with one another.

Already within the Torah itself, this hope is disappointed. Such is the volume of judicial disputes generated that Moses has to appoint a cadre of judges to take the weight of adjudication off his shoulders (Exodus 18).

A Christian reading of the Tanakh as the Old Testament is that this hope of a people who have internalised God's law is repeatedly frustrated, until in the prophecies of Jeremiah and

¹ Regina M. Schwartz 'The Revelation of Justice' in Yvonne Sherwood and Kevin Hart (eds.) *Derrida and Religion: Other Testaments* (London: Routledge, 2005) 337-47 at 338-39.

² Jonathan Burnside *The Signs of Sin: Seriousness of Offence in Biblical Law* (Sheffield: Sheffield Academic Press, 2003); 'Criminal Justice' in Schluter and Ashcroft (eds.) *The Jubilee Manifesto* 234-54 at 237; Bernard S. Jackson *Studies in the Semiotics of Biblical Law* (Sheffield: Sheffield Academic Press, 2000).

³ Burnside 'Criminal Justice' 245-36.

Ezekiel, disappointment turns to despair, and justice needs re-founding on a new messianic basis.⁴

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2) The Christian understanding of God as triune means that relationships are fundamental:

Christianity does not just offer a particular understanding of God's dealings with Israel, it claims, over against the other great monotheistic faiths represented here today, to offer a new understanding of the one God in God-self. In calling God as Father, and claiming that God is, from eternity to eternity, Father, Son and Spirit, Christianity claims that relationships are integral to God's being.⁵ Christianity anchors its assertion that God is love in the being of God.

Not only does Christianity affirm that God is relational, it picks up on the claim in Genesis 1:26-27 that humankind has been made in the image of God. This strongly suggests that relationships are fundamental to human being too, and therefore to the moral order which ought to pertain between human beings.

3) The teaching of Jesus emphasised right relationships as more important than abstract rights.

The triad of Christian resources for understanding justice as relational is completed by the teaching of Jesus in the Sermon on the Mount. In that teaching, Jesus establishes as definitive for Christian understanding of the Torah, that the key to this "law" are the two Great Commandments to love the Lord your God with all your heart, soul, mind and strength, and to love your neighbour as yourself.⁶ Jesus thus places the rules of the Torah within a relational framework. The rules are given a relational *telos*.

⁴ I trace this reading in chapters 3 to 5 of my *A Biblical View of Law and Justice* (Carlisle: Paternoster, 2004).

⁵ Schluter 'Three Relational Dimensions of Justice: Defining the Moral Order, Upholding the Moral Order and Putting Things Right' in Beaumont and Wotherspoon (eds.) *Christian Perspectives on Law and Relationism* (Carlisle: Paternoster, 2000) 1-17 at 4.

⁶ This is not to claim that this is an originality of Jesus' teaching.

Of immediate relevance to the present topic is Jesus' teaching that '... if you are offering your gift at the altar and there remember that your brother has something against you, leave your gift there in front of the altar. First, go and be reconciled to your brother; then come and offer your gift. Settle matters quickly with your adversary who is taking you to court. Do it while you are still with him on the way, or he may hand you over to the judge, and the judge may hand you over to the officer, and you may be thrown into prison. I tell you the truth, you will not get out until you have paid the last penny.' (Mt. 5:23-26).

How is this pericope to be understood? We must be careful not to leap to our conclusions too quickly. After all, Jesus' words are recorded in summary form, and as they appear in the text, there is a lot of key information we would want to know which is missing.

Take the first example. The person offering his gift at the altar remembers that his brother has something against him. Is the offence a justified one or not? Does the brother have legitimate grounds for complaint or is he just holding a grudge?

What about the second example? The reference in verse 26 to being thrown in prison 'until you have paid the last penny' seems to suggest that the person being imagined is a debtor who has not repaid a debt. However, is there a broader application intended? Is this meant to refer to all situations in which there is litigation between two parties?

Despite the questions which are worthy of serious further reflection, the place of this pericope within a section of the Sermon on the Mount dealing with the meaning of the Torah, adultery, divorce and oaths (Matthew 5:17-37) makes it clear that the main thrust of Jesus' teaching here is that relationships are central to the Torah, to the way in which God wants God's people to live.

Relational justice and current trends in litigation

There is a thesis which is gaining currency at the present time that there is a retreat of the state, not just from the economic arena, but also from the provision and administration of

justice.⁷ If true, such a development represents a major change, a possible high water mark. Lawyers love defining everything, and “time immemorial” can be specifically dated by English lawyers back to 3rd September 1189. English legal memory runs back to the end of the reign of Henry II, who established a system of itinerant judges and of public prosecutors,⁸ administering the king’s justice to the people. Such a system of dispute resolution under royal control developed over the centuries, eventually ousting other more localised courts, such as the manorial courts, and establishing a monopoly over against the ecclesiastical courts.

The system of royal justice can be understood as appealing to a certain Christian paradigm of justice. In a society of unequal local power relationships, between serfs and merchants, tradesmen, knights and lords, the king could be appealed to as the impartial defender of the rights of the powerless. A theological basis for this could be found in God’s decisive act of deliverance of the Israelites from their slavery in Egypt.⁹

However, as it has developed and expanded, justice in the name of the Queen has become somewhat depersonalised, as the state has, in crime at least, usurped the place of the victim, asserting the primary (and in practice, the sole) right to prosecute offences.

Cherie Booth QC, in a BBC Radio 4 talk reflecting on the story of Zacchaeus, began by acknowledging that her 10 years’ experience sitting as a part-time judge had shown her that ‘Too often [the victims of the crime] sit in the public gallery – feeling marginal to the case, even bemused by what’s happening.’¹⁰

The feeling that traditional, totally state-controlled, methods of prosecuting and sentencing crime is failing at least some victims and at least some offenders has led to moves in Australia and New Zealand to develop restorative justice and in England to pioneer relational

⁷ 2006 saw the IALS organise the WG Hart Legal Workshop around the theme of the *Retreat of the State: Challenges to Law and Lawyers*, London, 27-29 June 2006.

⁸ As to the latter, see Furlong ‘The Growth of Private Prosecutions’ (September 2007) *Criminal Bar Quarterly* 11-13.

⁹ Burnside ‘Criminal Justice’ 238.

¹⁰ Booth ‘Themes of Restorative Justice Found in the Story of Zacchaeus’ 118 *Justice Reflections* 1.

justice.¹¹ Although differences between the two models can be discerned at the level of theory,¹² for the purposes of this essay the terms will be used without distinction.

The recognition that an agreement is usually better than an argument has long been recognised in family cases, particularly where children are involved. A variety of mechanisms exist to enable the court environment to be used as a forum for negotiation and settlement, with judicial decisions seen as the last resort.

In the field of construction law, adjudication has developed as a procedure whereby an adjudicator gives a quick decision on the parties' rights, within 28 days. This is rough and ready justice, compared to the trials lasting weeks if not months for which the construction industry used to be famous. However, it is extremely successful, precisely because in this industry parties are likely to need to finish projects rather than spending time and money arguing about whose fault the delays were, and also because good ongoing relationships matter because they are likely to want to work together in the future.

In civil cases, mediation is now actively promoted, and parties who refuse to attempt to mediate their disputes are expected to give an explanation to the court of why they took that stance, and are at risk of being penalised in costs even if they ultimately win their case.

There is not time to reflect in depth on each of those trends, and there is already an extensive literature dealing with restorative justice in the resolution of crime. I want therefore to offer a few comments on mediation, on which there has so far been less theoretical commentary.

Mediation offers an interesting challenge to the prevailing judicial paradigm. Mediation is a form of face-to-face negotiation assisted by an impartial mediator, where negotiations take into account not just the parties' strict legal entitlements, but also the other realities of their respective situations. Did one party break the contract because someone else let them down? Has something unforeseen happened to their finances so that they cannot pay their full legal liability? Was their confusion between the two of them from the outset about what each

¹¹ The manifesto for relational justice in the United Kingdom is J. Burnside and N. Baker (eds.) *Relational Justice: Repairing the Breach* (Waterside Press, 2004).

¹² For a discussion of the differences between Relational Justice and Restorative Justice, see article by Adrian James in *Relational Justice Bulletin*, No. 2, April 1999.

expected of the other? How important is an apology to the wronged party? Do the parties need to work together in the future?

Writing in *The Barrister*, Andrew Goodman comments “[mediation] impacts upon the parties as a therapeutic reintegration of their relationship based on compromise and the readjustment of their interests – not their rights and obligations under law – through shared gains.”¹³

In addition to the pragmatic grounds for promoting mediation and settlement out of court – the cost of litigation, the inevitable delays in getting a decision,¹⁴ there are good grounds in Christian theology for affirming mediation as an approximation to justice, perhaps even a closer approximation to justice than strict application of the letter of legal rules without regard to the human circumstances of the case, would have achieved. In particular, it appears to offer superior opportunities for restoration of relationships between parties, as well as creating a forum in which an apology can be made (often, in my experience, sometimes wronged parties want and which traditional court procedures do not provide).

Conclusion

It can be seen from the above that there are powerful resources from within the Christian faith for understanding and promoting relational approaches to justice, which prioritise negotiation and settlement wherever possible, and affirm the restoration of appropriate relationships as a priority over and above retribution or monetary compensation.

However, it should also be recognised that the previous paradigm, that of the king protecting the rights of his weaker subjects, also identified an important aspect of justice. Equality before the law must be preserved in processes of relational justice. Negotiated outcomes must be freely assented to, and care must be taken to structure processes of relational justice so that the weaker party is adequately supported by a kinship or other group, otherwise the outcomes risk being further violation rather than genuine healing of damaged relationships.

¹³ Goodman ‘Mediation Advocacy: a safeguard for the consumer and a market for the Bar’ *The Barrister* 3-4.

¹⁴ Sir Gavin Lightman in his S.J. Berwin Summer Mediation in 2007 reflected that “I have often seen parties broken by the [litigation] process and by the cost of litigation”.

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