

Texas Justice, Vengeance and the Mark of Cain

By Tsvi Blanchard

On May 21, 2001, a Texas judge ordered 21 sex offenders to post warning signs —DANGER: Registered Sex Offender Lives Here -- on their homes and cars. The results were predictable — threats, evictions, vandalized property and an attempted suicide. Although the local ACLU and Criminal Defense Lawyers Organization strongly disapproved, many local residents thought “it is a great idea...maybe we should have them for thieves and killers, too.” One resident understood the warning signs as meant to help people protect themselves against people “sick enough to molest a child...” who “might do it again.” (*The New York Times*, May 29, 2001)

We can certainly understand how these people felt. Criminally violent behavior makes most of us anxious, even if we are not its immediate victim. We don't like being around people or places associated with past criminal — irrational — violence, however peaceful they may now be. How safe would any of us feel living next door to someone who had murdered or raped one of his neighbors-- even if he had served his sentence? When social constraints on aggressive impulses have been undermined, all of us seem to be vulnerable.

The story reminded me of others who had permanent marks of their errors attached to them — Cain in the Bible, and Hester Prynne in Hawthorne's *The Scarlet Letter*. Unlike the Texas sex offenders, however, neither Cain nor Hester were marked in order to warn others. The purpose of Hester Prynne's scarlet marking was to advertise her sin to the world. Cain's sign was for the purpose of protecting him from others, not others from him -- “The L-rd put a mark on Cain so that anyone happening to meet him should not kill him.” (*Genesis* 4: 15)

Upon reflection, however, we see that the sign required of sex offenders in Texas does more than warn others. Like the scarlet letter, it reveals the frightful secret of the sex offender's sin. And, as the earlier words I quoted make clear, it marks the person, not just the deed — such people are *sick* and, like lepers, they belong outside the camp, not living among us. Marking sex offenders is a way of distinguishing them from “the rest of us.” It signals their “exile.” The sign sees to it that the sex offenders live in a place that is at once of our world — we still know that they are around somewhere, and *not* of our world—they are, like Cain, “ a wanderer, a fugitive on the earth.” (*Genesis* 4:12)

Those opposing the order fully understand that criminal acts of violence put the perpetrator outside society, but believe that in the typical case punishment, independent of a belief in the rehabilitation of criminals, *restores* the criminal to society. The punishment of sex offenders is a temporary exile — the doer of criminal sexual violence is not supposed to become a permanent violent sexual criminal. How then can a permanent mark be placed upon him?

The story of Cain and his mark helps us to understand the mark of the sex offender. Although G-d has already punished him, Cain fears that because he has killed his brother, other people will kill him -- "Anyone who meets me may kill me." (4:14) He received his mark in order to protect him from those who otherwise would kill him. Cain's mark prevents what, in many societies, is a cycle of vengeance triggered by murder—x murders y who, as a result, is murdered by z, etc. G-d functions somewhat like a system of criminal justice — "objective" judgment and punishment prevent private vengeance. In the story of Cain, marking does not reveal Cain's deed — that is already known. But it does tell others that his violent deed has been properly dealt with and, therefore, that private punishment is no longer either needed or allowed.

When people do not believe that the official system of public justice is dealing with crime, they are inclined toward unofficial punitive violence — vengeance. And unofficial vengeance, we know, tends to be significantly out of proportion to the crime in comparison with punishment meted out by official systems of justice, especially if the crime is a violent one. It is likely, then, that despite the official conviction and punishment of sex offenders, there are those who continue to feel enraged at these "sick people" and want them punished further.

Perhaps Texans, even including the judge, feel that there is no system of righteous justice for sex offenders. Underneath the civil exterior, their rage may whisper, "Kill all those sick bastards." In a paradoxical way, then, the marking of Texas sex offenders, like the marking of Cain, may be interrupting the cycle of vengeance -- a compromise with the vengeful homicidal violence that lies only slightly beneath the surface. Requiring these awful signs may actually mean, "Make them cry out 'sex offender, sex offender,' for otherwise we shall do as we really wish and kill them in revenge for their having defiled a child."

Historically, other societal subgroups have been marked like the Texas sex offenders as fundamentally and permanently blemished by what was believed to be a history of horrible, violent deeds and an ineradicable impulse to repeat them. Although native North and South Americans -- outside any system of European justice -- were marked and enslaved, the drive to exterminate them arose again and again. African-Americans were marked, enslaved, and then, under Jim Crow, shamelessly exploited, but somehow that never worked well enough to prevent the ongoing taking of homicidal vengeance for what were perceived as violent acts threatening the fragile southern social order of white supremacy.

Jews in Christian lands, for example, were often seen as essentially perverse and violent. They were seen as capable of ritual murder and sexual violence against Christian women. Jews, like Texas sex offenders, were often "marked" and exiled from decent — read Christian -- society. This changed when, after the Emancipation, Jews became part of the system of justice.

When, however, the modern system of justice was perceived to fail — internationally, Germany was denied justice in WWI while nationally, Germans were economically and culturally mistreated — then Jews were marked, averting a homicidal cycle of German vengeance. But the underlying homicidal impulse eventually emerged in the Holocaust — the extermination of the Jews in revenge for what was perceived to be their violent crimes against Germany and Germans. Given this “logic,” it is no surprise that the worse the war went for Germany, the more commitment there was to exterminating the Jews.

The violence with which a human society must cope is unlikely to go away. We shall always have Texas sex offenders and their judges with us in one way or another. For those of us who regard the public marking of offenders as undesirable, preventing the violent cycle of vengeance depends on maintaining a public system of justice that is respected and trusted. Hoping for a kinder, gentler, more civilized polity is not going to work. Without a culture in which national and international systems of justice are believed to work, we will devolve into more destructive markings of “offenders” and perhaps the massacre and extermination that will follow. Fragile as they are, our system of justice -- courts and prisons -- are our best hope.

(For those interested, the theoretical support for this piece can be found in the highly influential book *Violence and the Sacred* by Rene Girard. [Johns Hopkins University Press. Baltimore.1977.])