

Presentation on Spirituality of Penal Abolition, International Conference On Penal Abolition (ICOPA) IX, May, 2000

[NOTE: *Noted Quaker activist and author Dr. Ruth Morris was the main organizer of the above annual event, that year in Toronto. She later was a recipient of Correctional Services Canada's Restorative Justice Award, and of The Order of Canada. Her death from cancer was a huge loss to the Restorative Justice field, which she preferred referring to as Transformative Justice. I presented on this theme at the ICOPA 2000 conference at her invitation.*]

by Wayne Northey

Introduction

A character in a forthcoming novel set during the Viet Nam War era expostulates:

“You want to know why Europe so quickly secularized and is so incredibly resistant to the Gospel? You North Americans are so hung up about the Enlightenment and its disparagement of the ‘foolishness’ of the Gospel. But you fail to understand that Western Europe simply became utterly sick of the endless and horrendous bloodshed blessed or instigated by the Church: the Crusades, the Inquisition, the ... pogroms against Jews, the Holy Wars, the witch-hunts, the burning of thousands of heretics by the Catholics, the drowning of similar thousands of Anabaptists by Protestants, the incredibly retributive penal justice system (based on Inquisition law, I discovered), the church’s blessing both sides of every war in Europe since Constantine, and on and on and on.

...

“The Enlightenment was in part an understandable reactionary celebration of the brilliance and goodness of man over against a church perceived to exist to glorify violence through its belief in ‘god’. The reason the Enlightenment took such root in the first place was the valid repulsion towards the ‘god’ of the churches: a ‘god’ who blessed war and bloodshed in Jesus’ name on a massive scale.

“North Americans positively *worship* at this ‘god’s’ shrine, which is violence. Ironically, while you defeated the Nazis in World War II, you Americans have become increasingly more like them ever since! ‘In God we trust’ is a lie. ‘In violence - especially bombs - we trust’ is the real truth. Bombs built by taking bread from the mouths of the poor. Christians worship this ‘god’ no less than secular people.”

“Violence is the ethos of our times”, begins one writer’s brilliant assessment of contemporary Western culture (Wink, 1992, p. 13). By “violence” is meant *the deliberate infliction of harm upon another as an end in itself*. This is of course also what “penal” means: *the purposeful infliction of pain upon another as an end in itself*: ‘pain delivery

like milk delivery', as Nils Christie aptly catches its quintessence and banality¹. Violence in Western culture is bar none the dominant spirituality of our age. It is and has been the driving spirituality of Western penal law as well.

Centrality of Western Christian Spirituality for Criminal Justice

The defining religious ethos of Western spirituality historically has been Christianity. Christianity has also been the reigning ideology in the West until into the nineteenth century. While it is salutary to discuss other world spiritualities with reference to Western penal law, no other religion or spirituality has remotely impacted the formation of the Western legal tradition like Christianity. Harold Berman's magisterial *Law and Revolution* (1983/1997) describes this interaction of law and Christianity as centrally formative to the Western legal system.

Later this year, the State University of New York (SUNY) Press will publish *The Spiritual Roots of Restorative Justice*, a work commissioned by the Centre for Studies in Religion and Society at the University of Victoria. I participated with Pierre Allard in writing the chapter on Christianity for that project. I thoroughly appreciated interacting with other world spiritualities to produce the manuscript. They all point towards penal abolition. I highly recommend the book!

But given the unmatched dominance of Christianity in influencing the development of the Western penal law tradition, I shall unapologetically concentrate my remarks today on *Christian* spirituality and penal abolition². I also have a far more intimate awareness of *Christian* spirituality, since I am a practising Christian, having been shaped by the North American evangelical tradition. I am also part of a Mennonite church, and am ecumenical in commitment and observance. My North American perspective will of course also be evident.

While one cannot wish away the past, can it be too much to hope that the twenty-first century for Christian spirituality world-wide will be marked by a profound renewed impulse towards peacemaking? Such a world-transforming spirituality has never been more needed! It is the contention of this talk that the Christian story offers a dramatically alternative narrative to that of resort to violence, seen unfortunately so predominantly in Christianity's long history. The story the Christian faith tells is eternal wellspring for the spirituality of penal abolition, however massively unfaithful Christian adherents have been to the plot-line down through the ages.

¹ See his 1982 publication.

² René Girard, whom I will discuss below, also indicates that "Christianity" in the academy is the "last politically correct scapegoat (Hamerton-Kelly, 1994, p. xi)." My teen-aged son once observed that in our culture any spirituality is readily acceptable - except Christian versions. There are good historical reasons why Christianity has been so eschewed, for it has often shown the world an ugly, oppressive face so contrary to the way of Jesus. Further, no attitude is so disliked ultimately as self-righteousness (often in religious guise). Ironically, however, this is an attitude more strongly critiqued by Jesus than any other world religion leader - perhaps with due premonition! Alistair Kee's historical study, *Constantine versus Christ* (1982) addresses the first concern, the Gospel of Matthew, Chapter 23, illustrates the second.

Some Church History

In March, 1773, in England, an eighteen-year-old youth, John Wilkes, was sentenced to death for a break and entry into a house and later a robbery of a watch and money from a man on the public highway. He appealed to Rev. Joseph Fletcher, an Anglican divine, for help in having the sentence commuted. The youth's parents had both died earlier, and Wilkes was in many ways pitiable, a fact fully known to the Anglican priest. Rev. Fletcher was universally considered an 18th-century St. Francis, "the holiest man this side of eternity", by contemporary John Wesley's account. In particular he was renowned for his commitment to caring for the poor. Nonetheless, he adamantly refused to intervene on Wilkes' behalf. After the youth's execution, Fletcher published a letter he had written Wilkes, which had urged him to "confess your crimes, and beg the Son of God, the Lord Jesus Christ, to intercede for you, [for] it is not too late to get your soul reprieved." He continued by promising that God Almighty "will deliver you out of the hands of the *hellish* executioner" and "will help you to die the death of the penitent (quoted in Gorringer, 1996, p. 3)." According to Fletcher, Wilkes died a convert, a fact gloriously published by him after the youth's execution.

Both Charles and John Wesley, famed founders of the Methodist church, were deeply committed to caring for the poor, including responsiveness to Jesus' powerful words of solidarity with the imprisoned: "I was in prison and you came to visit me." (Matt 25:36)" Nonetheless, we read this account by Charles Wesley of his visit to Newgate prison, July, 1738, on the morning he accompanied nine prisoners to the gallows: "They were all cheerful, full of comfort, peace and triumph, assuredly persuaded that Christ had died for them and waited to receive them into paradise.... I never saw such calm triumph, such incredible indifference to dying." He returned home and wrote: "Full of peace and confidence in our friends' happiness. That hour under the gallows was the most blessed hour of my life (Gorringer, 1996, p. 4)."

The Wesley's, Father John Fletcher, and their followers, were genuinely concerned for the poor. One Christian historian therefore plaintively asks: "What was it, then, which prevented them from seeing what the editors of the *Spectator* so clearly perceived [- 'that law grinds the poor' and 'rich men make the law']? How was it that they could see people like Wilkes, whose hopeless background they perfectly understood, go to the gallows for offences which were trivial and which involved no violence against the person, without exerting themselves to have the sentence commuted?... How is it that the question whether the law might be wrong, or even wicked, does not arise for these good Christian people? How could they come away from scenes of judicial murder feeling that this was 'the most blessed day of their lives?' (Gorringer, 1996, p. 5)"

One might similarly ask, with regard to contemporary Western law: How is it that the question whether the law might be wrong, or even wicked, does not arise for people committed to Christian spirituality? How could harsh sentences to penal institutions and the death penalty be embraced as quintessentially Christian by followers of the One who

said: “[God] has sent me to proclaim freedom for the prisoners... (Luke 4:18)”, and “I desire mercy, not sacrifice (Matt. 12:7)”; and who himself was executed by the best legal system of the day (Roman), and by guardians of arguably the high point of then contemporary religious spirituality (Judaism)?

Something happened to Christian spirituality between the Cross, originally *premier symbol of resistance to and negation of state power*, and the Cross, throughout most of Christian history, *supreme upholder of state power*. Christian spirituality initially had a profound *political subversion* dynamic at its very core. It also represented an unprecedented anthropological thrust that broke with dominant contemporary cultural scapegoating patterns. In honouring and worshipping an executed criminal, early Christians became irksome dissidents to the dominant mythology of culturally and state-sanctioned scapegoating violence.

René Girard, historian, literary scholar, and anthropologist, has for over forty years developed this understanding of Christianity brilliantly, and has studied scapegoating violence across a sweeping interdisciplinary landscape. In turn, his publications have inspired an enormous body of published research that similarly discerns a *scapegoat mechanism* in most human cultures throughout history, contemporary Western no less³.

As a large body of scholarship demonstrates, what “happened” to Jesus’ and New Testament teaching was the legalization and embrace of Christian worship and Church by Roman Emperor Constantine in the early fourth century⁴. One writer dubs it a “Judas kiss”.

The same historian comments on the Constantinian era: “But there is one conquest made by Constantine, the effect of which still continues to the present day, his most surprising yet least acknowledged... He conquered the Christian church. The conquest was complete, extending over doctrine, liturgy, art and architecture, comity, ethos and ethics. And this is the greatest irony, that Constantine achieved by kindness what his predecessors had not been able to achieve by force. Without a threat or a blow, and all unsuspecting, the Christians were led into captivity and their religion transformed into a new imperial cult.... But this achievement, unheralded then, unrecognized now, represents Constantine’s greatest conquest, the one which has persisted largely unchallenged through the centuries in Europe and wherever European Christianity has spread (Kee, 1982, p. 154).” The writer adds that “the reign of Constantine is a fundamental turning-point in the history of Europe, and not only Europe. From that time the imperial ideology, with all its implications for the accumulation of wealth and the exercise of power over the weak, was given religious legitimation by the church (Kee, 1982, p. 168).” The *persecuted* Church quickly became the *persecuting* Church in its response to pagans, Jews, all other outsiders, and eventually criminals.

³ See Williams (1996) for an extensive bibliography on Girard. See Bailie (1995) for a contemporary cultural application of scapegoating theory. See Williams (1991) and Alison (1993, 1996, 1997) for sustained theological presentations of scapegoating theory.

⁴ See Miller and Gingerich (1992) for an extended discussion of this and related issues.

This century, a large body of biblical scholarship⁵ upon rereading the founding texts has discovered the truth of Gandhi's statement: "The only people on earth who do not see Christ and his teachings as nonviolent are Christians (quoted in Wink, 1992, p. 216)." Gandhi also wrote: "The message of Jesus, as I understand it, is contained in the Sermon on the Mount.... Much of what passes as Christianity is a negation of the Sermon on the Mount (quoted in Stassen, 1992, p. 33)." This much at least may be stated unequivocally: there is "a great irony of history that the cross, symbol of the ultimate triumph of peaceful means to peaceful ends, has been used as a standard in battle (Anderson, 1992, p. 104)."

More Church History: The Atonement and Western Penal Law

One more historical note needs to be added: how the Constantinian shift in Christian spirituality, from an initial profound disavowal of state-sanctioned scapegoating violence, to an embrace of the very state violence that killed its Founder, initiated also the devastatingly punitive and retributive Western penal law system that has been in place for almost a millennium.

From a biblical/Christian concept of justice where the victim's voice is the primary voice and where a dynamic attempt at reconciliation, restoration, transformation and shalom between offender, victim and community is centre-stage, there was a progressive move to a concept of justice where the emerging State is central and where the victim's voice is more and more silenced⁶. The victim is displaced by the King or Emperor responsible for 'keeping the peace' within the kingdom.

One author explains: "... 'The [novel eleventh century] Gregorian concept of the Church almost demanded the invention of the concept of the State (Berman, 1983/1997, p. 404).' " And "as the [eleventh century] Papal Revolution gave birth to the modern Western State, so it gave birth also to modern Western legal systems, the first of which was the modern system of [Church] canon law (Berman, 1983/1997, p. 115)."

There was also in the eleventh century the emergence of a theology of satisfaction under the influence of the treatise, *Cur Deus Homo (Why God Became Human)* by Anselm of Canterbury. Explains one author: "However broadly Anselm conceived justice, reason required that he stop at the boundary of grace. God is 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. In *Cur Deus Homo* Anselm's theology is a theology of law.

"Before the time of Anselm (and in the Eastern Church still) it would have been considered wrong to analyze God's justice in this way. It would have been said, first, that these ultimate mysteries cannot be fitted into the concepts and constructs of the human intellect; that reason is inseparable from faith – one is not the servant of the other, but rather the two

⁵ See "Notes" in both books cited this paragraph for examples.

⁶ This process is well described in Van Ness and Strong (1997).

are indivisible; and the whole exercise of a theology of law is a contradiction in terms. And second, it would have been said that it is not only, and not primarily, divine justice that establishes our relationship with God but also, and primarily, his grace and his mercy; that is his grace and mercy, and not only his justice, which explains the crucifixion, since by it mankind was ransomed from the power of the devil and the demons of death – the very power which had procured the slaying of Jesus in the first place but which then itself was finally conquered through the resurrection (Berman, 1983/1997, p. 180).”

Anselm’s theory profoundly influenced the Western “cultural affect” - structural societal ethos - in all subsequent centuries. Although his theology of ‘satisfaction’, of ‘atonement’⁷ was never proclaimed as the official doctrine of the Christian church, it was widely accepted both in Catholicism and Protestantism and was to have devastatingly negative effects especially when applied to the criminal justice system⁸. Over the differing voices of many other Western Christian interpreters, Anselm’s voice remained the strongest until well into the twentieth century.

Comments one astute theologian: “For the Church Fathers, it is the devil who – illegitimately – insists on the payment of the debt incurred by humankind. Anselm inverts this. Now it is God who, legitimately, exacts the payment of debt... In both Old and New Testaments an indebted person could be ‘redeemed’ by the payment of his or her debt. Jesus, following Deuteronomy, insists on the cancelling of debt as a fundamental aspect of Christian practice. Anselm, however, makes God the one who *insists* on debt. The debt humanity has incurred must be paid with human blood. The God who rejected sacrifice now demands it... From the start sacrifice and satisfaction run together... The God who liberates from law is now, in Anselm, understood as hypostasised, personified law... What remains... is a mysticism of pain which promises redemption to those who pay in blood. In this move a most fundamental inversion of the gospel is achieved, which prepares the way for the validation of criminal law as the instrument of God’s justice instead of what it is in the gospel, an alienating construction which is at best a tragic necessity.

“The penal consequences of this doctrine were grim indeed. As it entered the cultural bloodstream, was imaged in crucifixions, painted over church chancels, recited at each celebration of the Eucharist, or hymned, so it created its own structure of affect one in which earthly punishment was demanded because God himself had demanded the death of

⁷ There have been three discernible views of the atonement in the history of the church, of which the second, the “satisfaction theory”, has been the most dominant in Western history since the 11th century. “The second group of theories may be said to have originated with Anselm, who saw sin as dishonor to the majesty of God. On the cross the God-man rendered satisfaction for this dishonor. Along similar lines the Reformers thought that Christ paid the penalty sinners incurred when they broke God’s law (Morris, 1974, p. 83).”

⁸ The main justification [for “new concepts of sin and punishment based on the doctrine of the atonement”] given by Anselm and by his successors in Western theology was the concept of justice itself. Justice required that **every sin (crime) be paid for by temporal suffering**; that the suffering, the penalty, be appropriate to the sinful act; and that it vindicate (“avenge”) the particular law that was violated. As St. Thomas Aquinas said almost two centuries after Anselm’s time, both criminal and civil offenses require payment of compensation to the victim; but since crime, in contrast to tort, is a defiance of the law itself, punishment, and not merely reparation, must be imposed *as the price for the violation of the law* (Berman, 1983/1997, p. 183. Italics in original; boldface mine).”

his Son (Gorringe, 1996, pp. 102 & 103).” By the birth of the modern prison in the late eighteenth century, and persisting to the present, what emerged was a penal system dedicated to a “mysticism of pain” - *with no redemption*. (That’s why by contrast the Stephen King novel and movie, *The Shawshank Redemption*, is so gripping!)

Another writer asks in application of the earlier mentioned Girardian scapegoat theory, “Is it possible that what we call a criminal justice system is really a scapegoat mechanism (Redekop, 1993, p. 1)?” He continues later: “In a secular democratic society, nothing is as sacred as the law code and the justice system which enforces it. The buildings in which laws are made are the most elaborate and the courts in which decisions are made about points of law are the most stately. Formality, uniforms, and respect surround the agents of law (Redekop, 1993, p. 16).” He finally states baldly: “It is possible to think of the criminal justice system as one gigantic scapegoat mechanism for society.... [A] tiny percentage of offenders who are severely punished can be thought of as a collective scapegoat for society (Redekop, 1993, pp. 33 & 34).”

The entire Girardian project in reading the Bible points to a profound *nonviolent image* of God. It discerns a dynamic of subversion within the Judeo-Christian tradition itself whereby God is eventually shorn of all violent attributes. It is a process “in travail”, whose culmination in Jesus on the Cross is the ultimate negation of all violence in God and hence humanity. Says one commentator: “The experience of being morally shaken by a public execution is the beginning of an anthropological and spiritual revolution for which the term ‘Christianity’ was coined decades after the public execution of Jesus (Bailie, 1995, p. 83).”

Since Constantine pragmatically and politically, and since Anselm theologically, the church has inconceivably claimed legitimacy for *the very violence that killed its Founder!* It further arrogated to itself, and society under its influence, that same rightfulness. This is the most amazing inversion of Christian spirituality in the long history of the Church.

René Girard, and the plethora of articles and books inspired by his writings, point to a reading of God in the Christian Scriptures “which is absolutely incompatible with any perception of God as involved in violence, separation, anger, or exclusion (Alison, 1996, p. 48).” Read as fundamental texts of cultural deconstruction, the Christian Scriptures emerge as the most radical demythologizing texts known to humanity.

The highly violent nature of the Western legal tradition would have been vastly different had this arguably more faithful reading of the founding texts been dominant. That is in fact the burden of Timothy Gorringe’s masterful work, *God’s Just Vengeance* (1996), which profoundly critiques Anselm’s satisfaction theory of the atonement.

So instead of a merciful and compassionate God as revealed in Jesus the Christ, the Christian “god” became a severe judge (for the past millennium *the* dominant Western image of God) bent on punishment and almost literally ‘blood-thirsty’. Christians who used the Cross to scapegoat the Jews, to lead Crusades and persecute others totally reversed what the Cross had originally stood for in Jesus’ death and resurrection. “Quick,

head off, away with it, in order that the earth does not become full of the ungodly.’ The voice is distinctly Martin Luther’s. Rulers are the ministers of God’s wrath, Luther insisted, whose duty it is to use the sword against offenders. They are ‘God’s hangmen’ (Gorringer, 1996, p. 131).” Luther is merely representative of Protestant and Catholic violently punitive church theory and practice dominant since the 11th century.

Conclusion

In 1993 Lee Griffith published an astonishing book entitled: *The Fall of the Prison: Biblical Perspectives on Prison Abolition*. His is a *tour de force* on a spirituality of penal abolition. The book’s opening shot is: “The gospel is profoundly scandalous, and until we hear at least a whisper of its scandal, we risk not hearing any part of it (Griffith, 1993, p. 1).” He presents his thesis in beguilingly simple terms: “Ultimately, there are not two kingdoms but one - the kingdom of God... ‘Freedom to the captives’ is not proclaimed [by Jesus] in some other world but in our world. 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 (Griffith, 1993, p. 28).”

How indeed can a Christian spirituality, responsive to the liberating thrust of the New Testament founding texts, so utterly contradictory to state-sanctioned scapegoating violence, support penal (pain delivery!) justice? That is the “peculiar question” this brief talk leads to.

A contemporary theologian writes: “...the human walk... begins in slavery and ends in freedom, and [its] point of progress at every moment is faith (Johnson, 1990, p. 11).” That is the quintessence of spirituality arising from the Judeo-Christian narrative. It shouts from the housetops: “Freedom for the prisoners (Luke 4:18)!” and “It is for freedom that Christ has set us free (Galatians 5:1)!”

René Girard states: “In the Hebrew Bible, there is clearly a dynamic that moves in the direction of the rehabilitation of the victims, but it is not a cut-and-dried thing. Rather, it is a process under way, a text in travail; it is not a chronologically progressive process, but a struggle that advances and retreats. I see the Gospels as the climactic achievement of that trend, and therefore as *the essential text in the cultural upheaval of the modern world* (Hamerton-Kelly, 1987, p. 141. Italics added).” If Girard is right, part of that “cultural upheaval” is penal abolition. I hope I have sufficiently pointed to some dimensions of the spiritual roots of this to whet your appetite for more. If so, please attend Jim Consedine’s and my workshop on a similar topic!

One writer commented on Griffith’s book thus: “Jesus said he had come to proclaim release to the prisoners. In *The Fall of the Prison* Lee Griffith makes what Jesus meant altogether clear. Now it is for us who have ears (quoted in Griffith, 1993, back cover).”

Indeed! What is needed is a spirituality of penal abolition with ears - then hands and feet!

May God have mercy on us all! Amen.

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