

## Transformative Justice Vision and Spirituality: Gladwin Heights United Church, Abbotsford, January 11, 2004

### *Introduction*

Thanks for the opportunity today of sharing about Restorative Justice in the context of Christian faith.

In May of 1996, a sex offender was released from prison to a halfway house in Toronto. The response of the community to his presence in their midst was anger and hostility, and the insistence that corrections officials remove him. This situation, while not at all unique in the North American context, was particularly noteworthy as it became the subject of a documentary film, *Hunting Bobby Oatway*.

The film focussed on the controversy around the release of a convicted incest perpetrator after ten years in prison. The story of his victims and the harm that was done to them and his own story of an abusive childhood are mingled with the hostility of the community (not the first nor the last) and fellow offenders in the halfway house toward him. The calls of local community activists and politicians to move him out of their community are particularly pointed. "Bobby Oatway, you are not wanted here, you are not wanted anywhere!", shouted a local politician repeatedly through a bullhorn, to cheering protestors gathered on the street with the frightened offender hiding inside the halfway house. In an ironic but not unusual twist, the perpetrator had become the victim, as so often the childhood victim becomes the eventual offender.

In the case of Bobby Oatway's offences, there is no question that great harm was done and that the pain and suffering of his victims, presented in the film, and that of other victims of sexual offences, is horrendously real. These things ought never to happen! And further, concrete ways must be found and are to address the needs of victims of sexual offences – and all victims! – for healing, safety and restoration.

At the same time, how we view and treat the perpetrators of these crimes in our communities, says something profoundly about us and the need for Restorative Justice.

### *The Origins of Scapegoating Violence Against Criminals*

"Violence is the ethos of our times.", begins one writer's robust assessment of contemporary Western culture (Wink, Walter (1992). *Engaging the Powers: Discernment and Resistance in a World of Domination*, Philadelphia: Fortress Press, 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" (from the Latin *poena* – pain) 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 banality. Violence in Western culture is bar none the dominant spirituality of our age. Retaliatory violence is and has been the driving spirituality of Western penal law as well.

## *John Wilkes*

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 widely 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, and indicated that Wilkes had died a glorious 11<sup>th</sup>-hour convert.

Both Charles and John Wesley, famed founders of the Methodist church, and your United Church forebears, 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... Full of peace and confidence in our friends' happiness. That hour under the gallows was the most blessed hour of my life (Gorringe, Timothy (1996). *God's Just Vengeance: Crime, violence and the rhetoric of salvation*, Cambridge University Press, p. 4)."

This at-the-time universal church attitude amongst Protestants and Catholics you may recall was identically demonstrated by the chaplain in the movie and book, *Dead Man Walking*, and reflects a centuries-old "gallows pietism" that believed capital punishment was "a providential occasion where proper dispositions for a good Christian death were ideally enacted in a grand public liturgy from which all could learn important lessons in both living and dying as good Christians (Megivern, James J. (1997). *The Death Penalty: An Historical and Theological Survey*, New York/Mahway, N.J.: Paulist Press, p. 162)."

One commentator on this universal acceptance of the gallows, and its holiness, asks: "How is it that the question whether the law [about capital punishment for over 200 offences] 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?' (Gorringe, *ibid*, 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)", "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)?

Mumia Abu Jamal, an American Black Muslim convicted murderer (though claiming innocence), has written: “Isn’t it odd that Christendom ... strenuously support[s] the state’s execution of thousands of imprisoned citizens? That the overwhelming majority of its judges, prosecutors, and lawyers – those who condemn, prosecute, and sell out the condemned – claim to be followers of the fettered, spat-upon, naked God? (quoted in Lewis Taylor, Mark (2001). *The Executed God: The Way of the Cross in Lockdown America*, Mark Lewis Taylor, Fortress Press, p. xi).”

Some have discovered the sad dominant truth of Mahatma Gandhi’s claim: “The only people on earth who do not see Christ and his teachings as nonviolent are Christians (quoted in Wink, *ibid*, 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, Glen H. (1992). *Just Peacemaking: Transforming Initiatives for Justice and Peace*, Louisville: Westminster/John Knox Press, p. 33).”

If the essence of the “law” – of how we should live – according to Jesus is *justice, mercy and faithfulness* (Matthew 23:23 – 26), as we heard read this morning, the church stands guilty of massive *injustice, mercilessness, and faithlessness* on the issue of violence generally, and punitive violence in particular.

#### *The Atonement and Western Penal Law*

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* for offender, victim and community is centre-stage, there was a progressive move in church and Western history to a concept of justice where the emerging State became central and where the victim’s voice was more and more muted. The victim was displaced by the King responsible for ‘keeping the peace’ within the kingdom. Hence to this day there is on court dockets: “Rex or Regina versus John or Jane Doe.”

Where did this all begin? In the eleventh century, new Western ideas of the church led to the first concepts of the modern-day “State”, and consequent development of our Western legal system with highly punitive laws.

There was also in the eleventh century the appearance by St. Anselm of Canterbury of a vastly influential (to this very day) theology of “atonement” (why Christ died) known as “the satisfaction theory”. Explains one author: “Before the time of Anselm (and in the Eastern Church still) 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... (Berman, Harold J. (1983). *Law and Revolution: The Formation of the Western Legal Tradition*, Harold J. Berman, Harvard University Press, Cambridge and London, p. 180).”

After Anselm, right up until the present, it was widely accepted both in Catholicism and eventually Protestantism, and imitated in emerging Western criminal justice systems that “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 (*ibid*, p. 183, boldface mine)."

Comments one astute theologian:

"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... 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 [punitive] criminal law as the instrument of God's justice ...

"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 his Son (Gorringe, *ibid*, pp. 102 & 103, boldface mine)."

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 the movie with a slightly revised title, *The Shawshank Redemption*, are so gripping!) Nils Christie, a Norwegian criminologist, as mentioned, calls this approach to penal law a system of "pain delivery" as routine as milk delivery, and as commonplace in its destructiveness as the great Nazi evil, which Hannah Arendt dubbed: "the banality of evil".

One writer argues that Western criminal justice systems have all the characteristics of ancient religious scapegoating practices:

"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, Vern (1993). *Scapegoats, the Bible, and Criminal Justice: Interacting with René Girard*, Akron: Mennonite Central Committee, p. 16)." Then he states:

"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 (*ibid*, pp. 33 & 34)."

Since Roman Emperor Constantine in the fourth century pragmatically and politically, and since St. Anselm in the 11<sup>th</sup> century 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 punitive rightfulness. This is a most amazing inversion of Christian spirituality in the long history of the Church.

### *Enter Restorative Justice*

Over the last thirty years, in many countries worldwide, there has been a number of new initiatives challenging us to go beyond such retributive justice to *Restorative Justice*. The best theological presentation to date in fact is entitled *Beyond Retribution: A New Testament Vision for Justice, Crime, and Punishment*, a copy of which is on the display table.

*At its most basic, Restorative Justice is a vision of peacemaking in response to crime by which all parties – victims, offenders, impacted communities – are caught up in ‘making it right’ in response to crime, with the victim and his or her needs centre-stage; healing its intended outcome; and a plethora of practices and programs its instruments.*

These initiatives have been emerging signs of hope calling for a radical reengagement of the Christian faith in criminal justice issues from a Restorative Justice perspective. I will mention one kind of initiative only as example: *Victim Offender Reconciliation Programs (VORP)*. These were pioneered by Canadians almost thirty years ago. VORP and similarly named mediation programs now around the world demonstrate that there are better ways than incarceration for many types of offences. Though used at first in property crimes only, the Victim Offender Mediation Program (VOMP) in British Columbia for a dozen years has successfully conducted “therapeutic dialogues” for and sometimes between offenders and victims in the most serious of violent crimes on the Criminal Code of Canada.

### *Bobby Oatway Reprise/Reprieve*

If it is true that the Christian Church:

- lost its scriptural understanding of justice;
- fell prey to a theology of punishment and violence;
- and must rediscover the richness of its peacemaking heritage;

then, such a recovery is a call to repentance and conversion, to creativity and community.

Bobby Oatway, with whose story I began, eventually was hounded out of Toronto right back into prison in British Columbia until his “warrant expiry”, when he had to leave prison. One of our staff drove him that day to his new home in the BC Interior. This had all been carefully worked through with the local RCMP Watch Commander, and several area residents. He slipped into a small community “under the radar screen” for a few weeks. Then, through a story in a local newspaper, the proverbial shit suddenly hit the fan! A town meeting was called at which virtually all but the gas station attendants showed up. So did I.

When I closed my eyes that evening, in light of what I was hearing, I could imagine a black standing before a lynch mob in the Deep South, or a Jew cowering before the vituperative rhetoric of Hitler. The scapegoating atmosphere was as thick as a London fog. Only this was almost 21<sup>st</sup> century “enlightened”, “civilized” British Columbia! (Note the quotation marks!)

“The only thing that can change a pedophile is a bullet to the head!”, one participant shouted, with thunderous accompanying applause. “I just want to let Bobby Oatway know that behind every door of every house in this community will be a loaded shotgun until he leaves this area for good!”, another exclaimed, with similar resounding ovation. The “mob”, some 200 strong, eventually marched right to where they thought (mistakenly) Oatway lived, and chanted: “Die, Bobby Oatway, die!”

I remind you. This was not Nazi Germany or the early 20<sup>th</sup> century Deep South! This was supposedly enlightened contemporary peace-loving interior BC. Gathered were the good and the God-fearing, your neighbours and mine – heck! – you and me!, the upright and the law-abiding. ... Well, except for the death threats, and the rock hurled through the motel window – which no one saw who did it... and the new RCMP Watch Commander who did not care to investigate.

For a paper on some of these scapegoating dynamics with Oatway, done jointly by myself and a Corrections staff person, please go to the website on the screen:

<http://www.emory.edu/COLLEGE/RELIGION/faculty/smith/vr/wayne.html>

But the fact is: *I couldn't blame them!* From what I had heard about Bobby Oatway that evening, I'd have been deathly afraid for my family and my community too! The only difference was: our agency had worked with Oatway for years; had known a distinctly human side to “Bobby Oatway Monster Sex Offender”; had known of all the hard work in prison he had done on his offences; had entertained him (some of us) in our homes; and had known that he was working hard at changing from the inhuman offender he had once been. But that information was censored that evening. Though I for one tried...

The next morning, Oatway snuck out of that community, never to return. Five days later, my wife, daughter and I were accompanying him to a welcoming community known as a “Circle of Support and Accountability” (run under Correctional Services Canada Chaplaincy) in another BC area. And, for the first time in his history of having been hounded from pillar to post, Oatway has remained in one community other than prison for several years right up to the present. Now under an assumed name, he continues to live a law-abiding life: he is a hard-working, tax-paying, upstanding member of Canadian society... like you and me, of course.

### *Conclusion*

What can a Christian community do in response to crime? What God in Christ, the Romans text tells us, does in response to all human wrong: *offer a supportive embrace while expecting full accountability.* Never naively, never lightly, never to put others at risk. But it can and is being done across Canada, with over 60 Circles of Support and Accountability that have operated in the past ten years. And until now, one (which is far too many!) in ten years has committed a repeat sexual offence. Whereas the dozens in the various Circles had been previously amongst the worst recidivists known to police.

In 1993 Lee Griffith published *The Fall of the Prison: Biblical Perspectives on Prison Abolition.* His is a powerful statement 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, Lee (1993). *The Fall of the Prison: Biblical Perspectives on Prison Abolition*, Grand Rapids: Eerdmans, p. 1).”

He asks and I echo it: *How 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?*

There are literature and some books on Restorative Justice at the display table, where I too will be for a time, willing to chat.

Thank you. Amen.