

Presentation on Restorative Justice, Tri-Cities Justice Forum, November 29, 1999

Introduction

In early 1974 two youths who had been drinking and had been "talked to" by the police already, took out their frustrations on the small community of Elmira, Ontario, by doing damage to twenty-two different vehicles and homes. Several months later the youths pleaded guilty to the charges, and Judge Gordon McConnell in Kitchener ordered a Pre-Sentence Report. Mark Yantzi, the Mennonite Probation Officer writing up the report, discussed the case with the local Mennonite Central Committee court volunteer, Dave Worth. Both had been reading recent publications by the Law Reform Commission of Canada in which it had been stated that reconciliation played an important role in criminal justice. They also knew that reconciliation was the central concept of their Christian faith. "Reconciliation" means attempting to re-establish peace in response to brokenness. They were hatching an idea.....

Yantzi proposed in his Pre-Sentence Report that the youths would benefit from meeting face-to-face with their victims and making amends. Judge McConnell was intrigued by the idea, and discussed it with the probation officer. The Judge indicated that the notion had lots of merit, but it was simply not done in Western jurisprudence. He made a fateful choice nonetheless when he decided "Why not?", and put the sentencing over until Yantzi and Worth could take the youths to meet each of the victims. They did and out of that experience arose the first ever "victim offender reconciliation project".

The above story, known in the Restorative Justice movement as "The Elmira Case" became a kind of proverbial shot that echoed around the world. Over 200 mediation programs in North America alone trace their origins to the program that came into existence as a joint venture between Ontario Correctional Services and the Mennonite Central Committee. Several hundred similar programs exist in Europe and elsewhere as well.

Two years after the first North American project began, the term "restorative justice" was first used in the professional literature. While it was an idea whose time had clearly come, and while today the term is everywhere in the professional literature, the phenomenon has not just known a straightforward advance since those two youths went on a vandalistic rampage so many years ago.....

Just this month, the founders and the agency begun at the time, held a 25-year celebration in Kitchener.

The Vision

Today, over 200 programs based on the "Elmira Case" operate in North America alone, and several hundred function worldwide, especially in Europe. The term "Restorative Justice" is widespread in an expansion past imagination only a short time ago.

Why all the fuss? More critically: is the phenomenon of Restorative Justice not just a

passing fad, the invention of a liberal, white middle-class, with all the trappings of classist divisions, along lines of racism, sexism, and ageism? And is it not soft on crime, only designed for lesser offences, pro-offender, and largely mindless of the victim's plight?

Saviour Stoney Story

In 1994, Saviour Stoney, a native Canadian, of Fort St. John began drinking heavily after having heard of the death of a close friend in a car accident. Eventually, he picked up a gun, and shot and killed his sister-in-law. He entered a guilty plea of manslaughter some months later.

A clinical counsellor in Fort St. John had heard of "Circle Sentencing" that had been done in the Kwanlin Dun community of Whitehorse, Yukon. The victim's family, and the perpetrator's family were interested in using circle sentencing.

A workshop and some information sessions were presented to all interested parties: Treaty 8 First Nations, court workers, RCMP, law officers, and the general public. Preliminary consultation was also provided to the victim's family and relatives, the chief of the Indian Band, the court's trial co-ordinator, Crown, defence and probation.

Forty-six persons participated in the actual sentencing circle. The Judge who had first heard the guilty plea to manslaughter, acknowledged he was taking a major risk, since the process and concept were so new to him.

The community consensus agreed to by the Judge was: two years in jail, and three years probation. In those five years, the stated expectation was that Stoney would work at changing significantly around issues of anger and drinking. After most had left the meeting, family members of the victim gathered around Stoney to bid farewell. It was a moment of real healing as victims' family members heard the acknowledged guilt, and nonetheless offered him well wishes and forgiveness.

The victim's family, the wider aboriginal and non-aboriginal community, and the perpetrator and his family were all satisfied that "justice had been done".

What do you think? And just what is "justice" anyway?

What Restorative Justice is Not

I will yet say more about aspects of justice and Restorative Justice itself. But before that, in partial answer to my questions above, I will make a few comments on what Restorative Justice *is not*.

1. *First*, it is not the latest "flavour of the month" about as faddish as "pogs" from a few years ago, and destined to be as ephemeral. Restorative Justice is a deep artesian stream that has fed human culture for as long as humans have traced their way across this earth.

Two Summers ago, I had the great pleasure of participating in a writing project organized by the Centre for Studies in Religion and Society at the University of Victoria. The initiative was inspired by a national Restorative Justice conference in March of 1997 known as *Satisfying Justice*. Several researchers, academics, and practitioners investigated the major world religious traditions, and secular and contemporary jurisprudential cultural roots of Restorative Justice. In an intensive week at a Summer Camp of caucusing, critiquing, and celebrating together, a book emerged that soon will be published by the State University of New York (SUNY) Press entitled *The Spiritual Roots of Restorative Justice*. The current Deputy Commissioner of Programs for Correctional Services Canada, Pierre Allard, and I were privileged to contribute the chapter on Christianity.

What stands out from that project is the profound ubiquitous religious/cultural rootedness of Restorative Justice. It sources from, and in turn elicits, some of the deepest intuitions of our common humanity in its quest to celebrate human dignity, respect, and inviolable worth.

2. *Second*, and in general, with apologies to those who may be such: *it is not necessarily what the politicians say it is!* Restorative Justice began with the grass-roots, and continues to enjoy immense community-based support and development throughout jurisdictions around the world where it has taken root. A European criminologist opines that the death knell of doing justice restoratively is allowing crime and justice to be politicized. He says: "...a strongly [politically motivated] punitive and law-and-order approach to complex criminal justice problems in general brutalizes prisoners, prison staff and society at large (*Satisfying Justice*, CCJC, 1996, p. 183)."

In that justice is already highly political in Canada, the real issue is: how to help politicians a) genuinely understand the vision of Restorative Justice; and b) keep focussed on the real needs of victims, communities and offenders impacted by crime, and not just on the next election!

At a Restorative Justice Workshop November 16 of this year held all day at Ferndale Institution, a prison in Mission, I met a prisoner, Murray Johnston, who had just published a Letter to the Editor. He wrote picturesquely: "The current political climate offers nothing more than Randy Whitemares, and Gurty Poolitics." [He was referring to Randy White, an outspoken MP, ever critical of Correctional Services Canada, and Gertie Pool, a strong activist critic as well.] He continued: "A good problem solver not only identifies the problem, but offers a solution." He concluded his letter this way: "Restorative Justice is a Christian concept where victims come away with a sense that justice really has been done, and offenders with a sense of responsibility and accountability. A win-win situation where healing and reconciliation truly takes place.

"I cordially invite both Randy White and Gertie Pool to attend this [Ferndale Institution] workshop, in the hope they can help in healing the pain of our society, rather than driving a wedge into an already gaping wound."

What an eloquent expression of the heart-beat of Restorative Justice! The writer deftly

underscored its healing dynamic, over against driving new wedges into gaping social wounds. This Restorative Justice vision, he said, both identifies problems, and offers solutions. These are initiatives so expansive, yet so resonant with the deepest well-springs of our shared humanity, they have elicited a Hallelujah Chorus of "Ahas" or "Eurekas!" the world over in awakening or reawakening a Sleeping Goddess of Justice from her deep sleep. In Western jurisprudence, Justice even is deliberately blinded. Imagine!

One Case Management Officer expressed his appreciation this way, in response to a Restorative Justice program operating out of Langley in federal Corrections. (In this initiative, avenues are created for "therapeutic dialogue" between victim and offender with relation to the most serious and violent crimes in the Criminal Code of Canada.). He wrote:

"I've been in the system for nearly 40 years; I've seen a lot and yet you've brought a whole new dimension to my work out here. The bus used to unload at the gate, like the raft at the River Styx, on the shore of a hopeless abyss.... You're providing hope for the future. I've seen the outcomes for both victims and the inmates, again and again. I see them when they come in, and I see their demeanour when they leave after one of the meetings you conduct. The difference is dramatic. And I see the effect on the inmates - how their attitude and behaviour change. You can't see these things month after month and not become a believer (*Restorative Justice: Rebirth of an Ancient Practice*, Wayne Northey, 1994, p. 38)."

Restorative Justice promises something far grander, and mines lodes significantly richer, than scrappy political clap-trap and maneuvering. Thank goodness! As one rape victim's husband wrote of the same program mentioned above: "Your vision, understanding and caring is a breath of fresh air threatening to bring humanity out of the dark ages of the adversarial system (*Restorative Justice: Rebirth of an Ancient Practice*, Wayne Northey, 1994, p. 14)."

Restorative Justice poses a profound threat: namely, to tease humanity out of the justice system! Restorative Justice in this respect is a dazzling invitation to come join the celebration called life! Once received, who but the most stubbornly contrary would want to miss it?!

3. *Third*, Restorative Justice is not "diversion". This cannot be stressed enough: **Restorative Justice is not diversion!** Diversion may however fit into "Restorative Justice" initiatives. (Diversion is any process that avoids a criminal case going to court.) If it is after all only diversion, then the term has been co-opted and a whole new language is needed.

More seriously however to be taken by far are the anguished cries of victims and victim service providers. A Discussion Paper, entitled "Restorative Justice Reforms to the Criminal Justice System" produced by the BC/Yukon Society of Transition Houses states directly: "Under no circumstances should restorative justice and alternative measures be applied to offenses involving violence against women and children (p. 4)."

This completely legitimate concern confuses Restorative Justice, the expansive vision, with "Alternative Measures" in government policy. The vision of Restorative Justice is all-encompassing, and Restorative Justice initiatives have been taken for several years with immense victim satisfaction in all categories of the most serious and violent crime in Canada. The one program in Canada doing this work out of Langley BC is not *remotely* diversionary however, and generally works with offenders years after their incarceration.

The "Restorative Justice" vision is in this case simply misunderstood, and in fact stands back of the very critique, with a definitive "NO" to all violence! In fact, Restorative Justice as a vision has as its primary "focal instance" the victim's horrendous plight as she or he reels from the overwhelming trauma of crime.

Wilma Derksen

Wilma Derksen's teen-aged daughter was kidnapped and murdered in 1984. A close friend asked her not long after the funeral what would be satisfying justice for her. She let her imagination picture what that would mean. Ten child murderers would have to be lined up, and she would pull the trigger ten times. Her sense of satisfaction at that point was immense; but her mind's movie projector continued to roll. She next saw the scene of desecration, then looked up to encounter ten mothers, each wailing over the loss of their children. She vowed from that point on to work to stop the endlessly repeated cycles of violence, beginning with her.

She now co-ordinates a nationwide initiative called "Victims' Voice", that works with victims in particular of serious and violent crime, to help them embark upon a personal journey of healing. She co-edits a wonderful newsletter called *Pathways*. She refers to her work as a Restorative Justice, victim-centred, initiative.

Wilma has also participated with a unique organization in the United States. She was present at their first act of civil disobedience in Washington, DC, when they unfurled a banner where it was *verboden*, that exclaimed: "DON'T KILL FOR ME!" They have organized an annual two-week march for several years in a different state that has carried out regular executions. Their simple message, "DON'T KILL FOR ME!", is riveting because of their membership. The agency, which calls itself "Murder Victims Families for Reconciliation", can only be joined *if the member has lost a loved one to murder*. So, when a member takes the podium to tell her story of profound pain and loss, and is joined by a mother of a murderer on death row, and then Sister Helen Prejean of *Dead Man Walking* fame recounts her journey with murderers and their victims' surviving family members, there is little surprise that everyone sits up and pays attention!

A word of caution however: though Wilma and the above-mentioned members all talk, and often use, the term *forgiveness*, they are the first to warn that it is nonetheless the "F" word when urged from a non-victim outsider, or when coupled with "forget", or when embraced before significant elements of healing have occurred, or when not originating from *within the heart of the victim her/himself*.

Restorative Justice is not diversion!

4. *Fourth*, Restorative Justice is not any one program or a process, or a set of such. Labelling a program or even a new province-wide government initiative "Restorative Justice" may be no more the reality than the clothing the Emperor thought he was wearing in the Hans Christian Andersen fable! The proof is not in the terminology, but in the program's faithfulness to the vision. In Susan Sharpe's masterful primer on Restorative Justice, entitled *Restorative Justice: A Vision for Healing And Change*, published by the Edmonton Victim Offender Mediation Society, she explains that "Restorative justice is an orientation, not a type of program. It is a set of values and beliefs about what justice means, which in turn point to principles for responding to criminal harms (p. 19)." Her book expertly, in three parts, lays out "The Case for Restorative Justice", "The Practice of Restorative Justice", and "Restorative Justice Programs" that are effective.

Have you caught a sense of the Restorative Justice vision yet?

Let me try to help further.

More on the Vision of Restorative Justice

Restorative Justice above all is a vision and a dream. It taps into some of the deepest wellsprings of human longing, but like a desert mirage, its actual attainment - or definition! - proves invariably elusive. No one program, procedure, or implementation of the ideal can ever perfectly capture "Restorative Justice", any more than any one piece of art catches the quintessence of beauty.

The concept of Restorative Justice is like that "turn for the good" in fairy-tales, which the creator of *The Lord of the Rings*, J. R. R. Tolkien, calls a *eucatastrophe*. *Eucatastrophe* is the dynamic in all authentic stories that supplies constant hope and prospect of a happy ending, no matter how dark the existential moment. Such a prospect for new beginnings potentially ignites, or re-ignites, a flame of hope and expectation that can renew a passion for justice grand enough that we dare invite all to take shelter under its wings, and sufficiently inspirational to snatch our breath away, or even cause us to leap to our feet like hearing the first strains of Händel's *Hallelujah Chorus*.

It is a potent enough spell that it can make a believer of a crusty old prison guard, veteran of 40 years. It also can cause a victim of a violent, meticulously planned rape, perpetrated by a serial rapist who for months terrorized the community where he operated, declare: "*It's a rebirth!*". This was said on her initiative at a news conference after the experience of meeting for several hours in prison with the serial rapist and two mediators. And incidentally, the rapist wrote subsequently that "in helping his victims reaffirm their humanity, he had rediscovered his own". He has continued to follow a path of change and growth. I talked with him most recently at the Ferndale Institution Restorative Justice Workshop where he provided leadership.

Restorative Justice holds out the promise of doing "justice without violence", of the abnegation of both unlimited Ku Klux Klan-like vigilantism, *and* principled state retaliation.

New Zealand

Restorative Justice also has caught the imagination of an entire society in New Zealand.

In 1989, New Zealand's Labour government enacted the *Children, Young Persons and Their Families Act* under a policy of fiscal restraint in youth justice spending. A new forum was thereby brought into being, largely based upon aboriginal Maori ways of less hostile approaches to justice. It also addressed conservative privatization concerns, and general issues about the exclusion of victims from the justice system. There was, as in Canada, also a huge overrepresentation of aboriginal youth in the justice system. (In Saskatchewan, over 75% of the prison population is native, compared to an 11% representation in general.)

The new forum for justice mandated by this act was the "Family Group Conference". In all charges but manslaughter and murder, youth must first be brought to such a conference instead of court. CBC journalist, David Cayley writes: "Whereas Canada's Young Offenders Act mandates an incoherent mix of rehabilitation and punishment, leaving judges free to interpret it according to their liking, the Children Young Persons and Their Families Act establishes a clear preference for restorative, noncustodial, community- and family-oriented dispositions over criminal prosecutions (*The Expanding Prison*, David Cayley, p. 171)."

The procedure has not only been fiscally highly successfully, but in the justice domain itself it has significantly positively impacted youth crimes.

In Canada, about 34% of those tried in youth court are given custodial sentences. In New Zealand, since the new Act came into being, only 2% of similarly charged youth go to jail. Canada incarcerates youth at a greater rate than any other industrialized nation, *at twice the rate of the United States!*

Judge Heino Lilles contends that labelling a youth "criminal" through a custodial sentence is the surest way to create a career criminal for the next several years. He states: "We know absolutely unequivocally that, contrary to public belief and expectations, the youth criminal justice system cannot cure delinquency; it does not help dysfunctional families; it does not make our streets safe; it does not make our adolescents walk, talk and dress like adults. We have lots of experiential evidence within Canada and the States, and we have lots of research evidence that establishes beyond reasonable doubt that increasing penalties and making transfers to adult court easier does not reduce offending. What it does is it creates an illusion of action. It may be good politics but it's very poor public policy (*Prison and Its Alternatives*, David Cayley, CBC Ideas, 1996, p. 39)."

Family Group Conferencing has since spread to Australia, Britain, the U.S., Canada, and

other jurisdictions.

Some History

So Restorative Justice is not what its detractors often think, sometimes understandably. I have two tasks remaining: to talk a little history, and to leave behind a sketch of how you would know if you actually "met" or tried to start a Restorative Justice program.

A Little Bit of History

History is a lens upon the past conducive to our perhaps not repeating similar mistakes in the present and future. *Anthropology* is a lens on culture enabling us potentially to break with the violence of the past, a violence so endemic to all cultural institutions.

Almost a millennium ago, in the late 11th century, European history underwent a significant upheaval some call "The Papal Revolution". During this time, the Church moved to consolidate its power over all souls and kings of Europe, the great universities began to emerge, and the Western legal tradition started to take shape, as new law codes were formulated for study and promulgation throughout the Western world.

In a fateful interplay between Church and Society far too complex to describe in a few moments, secular states began to follow the lead of how the Church dealt with its religious heretics. These "social heretics" began to emerge under new state law codes as "criminals", whose victims were no longer the actual victims, but "Rex" or "Regina", or later "we the people" under the United States Constitution.

So the evolution of the criminal justice system in the West was away from *community and victim centred justice* towards *state and offender centred justice*. The former had been a dominant approach in the ancient Hebrew culture, in Roman society when applied to its own citizens, and in many pre-colonial African and North American and worldwide indigenous cultures. In the Reconstruction of Japan following the Second World War, the Japanese became the first industrialized country nationally to embrace this more restoratively oriented way of justice. As already described, New Zealand since 1989 has established state-wide a Restorative Justice youth justice system.

A shift away from this approach for common law Western jurisdictions started with the Norman Conquest of Britain in 1066. The state began, as criminologist Nils Christie said provocatively, to *steal the criminal conflict from the community*. It is still a shock for some victims to discover that they are not even named on the court docket, having a millennium ago been displaced by *Rex* or *Regina*. One victim of rape describes a fantasy of phoning the Queen in Buckingham Palace on each anniversary of the assault to ask her how she is doing!

The purpose of the law shifted dramatically as well. Previously, the emphasis had been upon making the victim whole again, what in the ancient Hebrew culture was called "restoring *shalom*". With the rise of the king's power, the purpose became to uphold the

authority of the state.

There was dominant Western religious undergirding of this approach which led to a marriage of law and religion that placed on the one hand primary emphasis upon the offender's violation of the law while dropping any concern for rehabilitation of the victim. On the other hand it drew on Roman slave law and one-sided biblical retributive understandings, as a model for meting out the worst of punishments imaginable upon the offender.

This form of response to crime is known as "retributive justice", and has dominated Western jurisprudence for a millennium.

It was precisely over against the excesses of various forms of (physical) scapegoating violence that some well-meaning Christian philanthropists tried in 1790, in Philadelphia, Pennsylvania, to move away from physical punishments towards an emphasis upon rehabilitation and reformation of the criminal. If only they could lock each individual into a jail cell with a Bible and a rule of silence, surely the violence would cease, and the criminal would become "penitent"! The new name for this form of response to crime was the "penitentiary". The new motive was rehabilitation, not retribution. The idea caught on like wildfire, and continues to spread like no other around the globe to this day. But, it soon became evident that, whereas former means of scapegoating administered physical wounds that eventually healed, the penitentiary began to inflict psychic harms that rarely ever healed. Though not the intent, a new scapegoat mechanism arose in the form of the penitentiary that destroyed the very *psyche* of the convicted criminal. Then where did that lost soul fit into society?

In this context of scapegoating, Restorative Justice poses perhaps the most troubling question: "Why harm people who harm people to teach people that harming people is wrong?" The Restorative Justice vision moves away from a "stigmatizing shaming" scapegoat mechanism to a "reintegrative shaming" way of nonviolence in a bid to break definitively with the endless cycles of violence in our culture.

The Essence of Restorative Justice

An international conference called "Justice Without Violence" was organized in Albany, New York in June of 1997. It was an attempt to bring together theorists and practitioners of Restorative Justice with criminologists holding out for a peacemaking, rather than a warmaking, response to crime. That conference pointed to the essence of Restorative Justice, namely: *peacemaking*. That does not mean the peace of the graveyard. Rather, it points to the dynamic peace of communities that say, NO MORE SCAPEGOATING in response to criminal conflict.

From a peacemaking perspective, Restorative Justice asks what is the difference between youth mob violence that led to Reena Verk's tragic murder in Victoria two years ago, and societal mob violence that wanted to do the same thing to the perpetrators? When serial killer Ted Bundy was executed in Florida amidst the fanfare of a *Mardi Gras*-like

celebration outside the prison gates, a journalist wrote about the state killing as "a brutal act done in the name of civilization". For this very kind of scapegoating, Gandhi responded to the question, "What do you think of Western civilization?" with: "I think it would be a good idea". Restorative Justice is that "good idea" in response to crime. Peacemaking is its essence. Alternatively stated: lurking just below the surface of our so-called "civilized" Western society is a profoundly violent yen to scapegoat.

When Bobby Oatway, BC's most notorious sex offender, was released in June of this year on warrant expiry to the small town of Clinton, a Town Meeting was organized by a Citizen's Action Committee attended by almost every adult in the community. I also attended, and listened to the thunderous applause given one local shop keeper who said, "The only cure for a pedophile [which Oatway incidentally is not], is a bullet to the head!" It was chilling that about 200 at the meeting subsequently went to Oatway's residence and began chanting: "Die a slow death, Oatway! Die a slow death Oatway!" Are the people of Clinton socialized any differently from elsewhere in Canada?: the Tri-Cities, for instance? I don't think so. They were simply displaying what lies beneath the surface, within us all, when we do not consciously commit to peacemaking, restorative ways of response to crime.

Conclusion: Restorative Justice Principles

If the essence of Restorative Justice is *peacemaking*, three quintessential principles guide it:

1. *Crime is a violation of a relationship among victims, offenders, and the community that calls forth restoration.*
2. *Restoration involves the victim, the offender and community members in a quest to bring, healing and wholeness to the brokenness of crime.*
3. *Restorative Justice is a consensus approach to justice.*

The distillation to three principles of Restorative Justice was adapted from a recent Discussion Paper circulated by Dennis Cooley of the Law Commission of Canada. The paper is entitled: *From Restorative Justice to Transformative Justice*, and posits conflict as normal within society, where concepts of right and wrong clash on an endless array of issues. It points to an endless dynamic of *transformation* to bring positive change and healing out of every hurtful conflict, criminal and non-criminal.

Quaker activist, Ruth Morris, has similarly said Restorative Justice is "NOT ENOUGH!", and points to sweeping changes to move us dramatically away from a "misery justice system" as she designates too much of contemporary Western justice.

The Law Commission paper concludes, and I conclude, thus:

"Transformative justice must be driven by the needs of participants. Decisions on how to

resolve the conflict ought to be based on a consensus. By consensus, we mean an agreement on how to move forward that is acceptable to all parties. A consensus cannot be imposed. Nor is consensus just a middle ground position. The goal will be to find common ground on which a mutually acceptable resolution can be established. This is the power of transformative justice: the possibility of using the substance of a conflict as a means of exploring options and establishing responses that are not only acceptable to all parties but develop and strengthen relationships among those involved (*From Restorative Justice to Transformative Justice*, p. 51)."

To get at Restorative Justice, we have met several persons tonight directly impacted by its vision, and have heard of state-wide implementations of the phenomenon. We have also looked at the essence, namely *peacemaking*, and the quintessential principles of Restorative Justice, namely *violated relationships that call forth restoration in a consensus approach*.

In a fascinating look at forgiveness, entitled *Embodying Forgiveness*, theologian Gregory Jones asks the question: "Is violence the Master of us all?", and concludes with these words: "There is a way of unlearning... evil in general, and violence in particular; it is found in embodying habits and practices of forgiveness... (*Embodying Forgiveness: A Theological Analysis*, L. Gregory Jones, 1995, p. 98)."

Restorative Justice in the final analysis is the endless quest to "embody habits and practices of forgiveness." Not cheap and "F"-word forgiveness, but the kind that nonetheless transforms potentially the whole world! That is the challenge for us all!

Thank you.