

## Restorative Justice Vision and Spirituality

by Wayne Northey

### *Introduction*

I have been tasked to give you a little bit of a taste of what Restorative Justice is. From the first time the term was used in the professional literature just 30 years ago, to today, there has been an enormous worldwide embrace of Restorative Justice in many criminal justice jurisdictions, especially Western. Like other such movements, there is also enormous variety in expression of what is Restorative Justice.

A simple way to describe it is: *Restorative Justice is a peacemaking rather than a warmaking response to crime, whereby ideally all may bring as much closure as possible to the criminal act, with the offender/perpetrator fulfilling obligations to “make it right”, and the victim and impacted community able to move on.* In *The Little Book of Restorative Justice*, Howard Zehr, a leading theorist, writes: “Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible (Zehr, 2002, p. 37).”

A significant impetus to its beginnings in current Western criminal justice jurisdictions was the so-called “Elmira Case”. I will tell that story first, then look briefly at the bigger picture through the lenses of history but mainly Christian theology.

### *The Elmira Case*

In 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 victims’ property. 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 a recent publication 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.

The youths eventually met with all their victims, in an unprecedented move in Western criminal justice. This incident, known in the Restorative Justice movement as “The Elmira Case”<sup>1</sup>, became a kind of proverbial shot that echoed around the world in a growing “Restorative Justice” movement.

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<sup>1</sup> See a fuller account in Dean Peachey’s “The Kitchener Experiment” (1989).

In Langley, this approach to justice was applied by Fraser Region Community Justice Initiatives Association (C.J.I.) to the most serious and violent crimes in the criminal code of Canada. For over 15 years, the “Victim Offender Mediation Program” has offered “therapeutic dialogue” for victims and perpetrators. It is renowned in international criminal justice circles for its contribution to Restorative Justice in peacemaking and restorative initiatives in the most serious criminal cases. C.J.I. won two years ago the top Canadian award for Restorative Justice.

Around the globe, several Restorative Justice Initiatives have taken root. Here is a brief sampling:

- There are hundreds of **Victim Offender Mediation Programs** operating. Victims and offenders through a mediator or mediators help bring closure to the crime through facilitated dialogue between one another.
- There are hundreds of **Community Conferencing Programs**, developed first in New Zealand in 1989 in what was called “Family Group Conferencing”, where victims, offenders, significant family members and other supporters under supervision of a professional, often police in North America, work towards making right the crime.
- **Peacemaking Circles**, first developed in Canada, are deeply rooted in aboriginal spirituality understandings. They address not only the immediate crime issues, but underlying community issues too, to rebuild community where crime has broken it.
- **Surrogate Victim/Offender Restorative Justice Dialogue** allows victims and offenders to encounter one another, but not related by the same crime. This may happen when the other encounter is not possible, or in preparing for the actual victims and offenders of the crime to meet.
- Our agency operates together with Catholic Charities a Fraser Valley **Circles of Support and Accountability Program**, CoSA, also a Canadian first, that works with high risk sex offenders returning to the community on what is called a “warrant expiry” – when the prisoner has no further correctional controls upon him. Invariably the police petition the court for some restrictions based upon Section 810 of the Criminal Code. A group of usually 4 – 7 volunteers commits to work with the ex-prisoner weekly for at least a year, offering support, holding him accountable. For 11 years, this program across Canada has been highly effective in preventing repeat sexual offences, with a rate of non-recidivism sexually by participants at 70%.

### *Christian Violence in Church History*

In the West, the church established the criminal justice system. I shall now turn to a brief consideration of this history, and the underlying theology. Then I shall point out another way that more recent church involvement has taken justice.

Not all of you here share a faith commitment; some of you are from other faiths or no faith. I hope this part will be seen as nonetheless pertinent, since it is crucial historical and theoretical/theological background to the rise of Restorative Justice against this very backdrop of Western criminal law. A publication that discusses many other religious

traditions, including secular understandings of justice with reference to Restorative Justice, is *The Spiritual Roots of Restorative Justice* (Hadley, 2001).

Something happened to Christian spirituality between the Cross, originally *premier symbol of resistance to and negation of abusive state power*, and the Cross, throughout most of Christian history, *supreme upholder of state violence*. In honouring and worshipping an executed criminal, early Christians became irksome dissidents to the dominant mythology of culturally and state-sanctioned scapegoating violence.

This past half-century, a large body of biblical scholarship<sup>2</sup> upon rereading the founding texts has rediscovered the peacemaking thrust of the Gospels, especially in the Sermon on the Mount, the early church's primary ethical catechism. One theologian writes that 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)."

Theologian Lee Griffith in *The War on Terrorism and the Terror of God* (2002) argues that the terror of God is none other than God's peacemaking message of the Cross. He asks: "What would this mean if it were true that we love God only as much as the person we love least? Would it not mean that, when we have finally won the victory in our war on terrorism, when we have finally managed to exterminate all the thugs and Hitlers and terrorists, we will have expressed nothing so much as our total confidence in the death of God? (Griffith, 2002, p. 263)" This is the heart of Griffith's sustained thesis that "the biblical concept of 'the terror of God' stands as a renunciation of all violence – and of death itself (inside front jacket cover)." This of course seems an impossible dream – like Kingdom Come!<sup>3</sup>

On the other hand, one must only think of the current "War on Terror" waged by the United States, even in Christian terms from the mouths of President George Bush or Secretary of State Condoleezza Rice. May such a war legitimately claim over 100,000 civilian deaths<sup>4</sup>, and still be "good violence"? May the United States outside China and Russia carry out the death penalty against the greatest number of criminals, many of whom, it is discovered post-execution, are innocent, and this still be "good violence?"

So Christians are caught right at the point of biblical interpretation and application itself, when it comes to state violence in response to modern-day terrorism or yesteryear state enemies, domestic and foreign.

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<sup>2</sup> See "Notes" in Anderson, 1992, for examples.

<sup>3</sup> In his first book, *The Fall of the Prison* (1993), Griffith starts out saying: "The gospel is profoundly scandalous, and until we hear at least a whisper of its scandal, we risk not hearing any part of it (p. 1)." He writes a little later, summing up his theme: : "Ultimately, there are not two kingdoms but one - the kingdom of God... 'Freedom to the captives' is not proclaimed 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 (p. 28)."

<sup>4</sup> Herbert, 2004.

The 12<sup>th</sup> and 13<sup>th</sup> century Crusades that killed thousands of Muslim “infidels”; the multi-century Middle Ages Inquisition that killed thousands of Jews, “pagans”, and witches; the 16<sup>th</sup> century Protestant Reformation that killed thousands of Anabaptists, and so on, do not make for pretty Christian history.

A theologian writes: “One reason that the world finds the New Testament’s message of peacemaking and love of enemies incredible is that the church is so massively faithless. On the question of violence, the church is deeply compromised and committed to nationalism, violence, and idolatry (Hays, 1996, p. 343).”

If the essence of the “law” – of how we should live – according to Jesus is *justice, mercy and faithfulness* (Matthew 23:23), the Western church indeed stands guilty of injustice, mercilessness, and faithlessness on the issue of violence.

*More Church History: The Atonement and Western Penal Law*<sup>5</sup>

There is one additional consideration: “the satisfaction theory” of the atonement [a theory on why Christ had to die for our sins], which took root from the 11<sup>th</sup> century on, under the influence of the treatise, *Cur Deus Homo (Why God Became Man)* by St. Anselm of Canterbury. Please bear with me; this gets a bit technical and theoretical, but it is crucial to our understanding the background of Restorative Justice.

There have been several discernible views of the atonement in the history of the church (Bellinger, 2001, pp. 134ff), of which the “satisfaction theory” or theories, has been the most dominant in Western history since the 11th century. “[These] theories may be said to have originated with Anselm, who saw sin as dishonour to the majesty of God. On the cross the God-man rendered satisfaction for this dishonour [through blood-sacrifice]. Along similar lines the [16<sup>th</sup> century] Reformers thought that Christ paid the penalty sinners incurred when they broke God’s law (Morris, 1974, p. 83).”

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<sup>5</sup> Throughout this section, I am drawing fairly extensively upon Allard and Northey (2001). In discussing this work, Gerry Johnstone writes (2003, p. 106): “However, according to the biblical scholarship described by Allard and Northey, a proper reading of the Hebrew Scriptures reveals that it too authorises restorative rather than retributive justice. To understand this, it is necessary to shift our focus from the specific descriptions of divine punishment towards broader and more pervasive Old Testament themes, such as God’s persistence in keeping his promise to his people, despite their persistent failure to adhere to their side of the Covenant...”

“So why has the Christian tradition generally failed (spectacularly) to recognise this? Why has it drawn from the Old Testament an image of a wrathful, violent God? And, why has it interpreted the crucifixion of Christ as meaning that earthly punishment is demanded because God demanded the death of his son ...? In Allard and Northey’s account, these ‘misinterpretations’ occurred when the Christian Church moved from being the persecuted to becoming the dominant power in society, itself involved in persecuting Pagans, Jews and other outsiders. A politically powerful church began reading the Bible through a different lens, finding in it a justification for its violent suppression of sin and evil. From then on, the Christian Church became a conservative force, rarely challenging and frequently supporting the state criminal justice system based on the repressive Roman slave law.

“Now, though, with new readings available to us, Allard and Northey call for ‘a radical reengagement of the Christian faith in criminal justice issues from a restorative justice perspective’.”

Explains one author: “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 ... 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).”

Although Anselm’s theology of ‘satisfaction’ was never proclaimed as the official doctrine of the Christian church, it was widely accepted both in Catholicism and Protestantism and was to have negative effects (what one author calls “structures of affect”) when applied to the criminal justice system.

“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 [since Anselm] 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 (Berman, 1983/1997, p. 183. Boldface added).” The punishment must fit the crime, right?

Over the differing voices of many other Western Christian interpreters, Anselm’s voice remained the strongest until well into the twentieth century.

“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 [negative effect] one in which earthly punishment was demanded because God himself had demanded the death of 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*. “Penal” derives from the Latin *poena* – pain – that was to be delivered in Western criminal justice as routinely as milk delivery of a bygone era. (By contrast the Stephen King novel that led to the movie, *The Shawshank Redemption*, is so gripping!) This incredibly violent penal justice was the dominant view of justice ever since St. Anselm, one that Restorative Justice takes direct issue with.

### *Beyond Retribution*

In response to this history, *Beyond Retribution: A New Testament Vision for Justice, Crime, and Punishment* (Marshall, 2001), is instance of rereading the Judeo-Christian founding texts to provide a basis, not for continued scapegoating violence in the modern

Western secular state (which still has intact many trappings of a bygone religious era!<sup>6</sup>), but for a profound redirection of traditional interpretation of those texts away from violence, “beyond retribution”, towards, biblically, *shalom*, reconciliation and forgiveness.<sup>7</sup>

Marshall states at the outset that his “premise is that the first Christians experienced in Christ and lived out in their faith communities an understanding of justice as a power that heals, restores, and reconciles rather than hurts, punishes, and kills, and that this reality ought to shape and direct a Christian contribution to the criminal justice debate today (Marshall, 2001, p. 33).”

Marshall further challenges directly the longstanding dominance of atonement as “satisfaction” and “penal substitution”. He writes: “The logic of the cross actually confounds the principle of retributive justice, for salvation is achieved not by the offender compensating for his crimes by suffering, but by the victim, the one offended against, suffering vicariously on behalf of the offended – a radical inversion of the *lex talionis* [law of retaliation] (*ibid*, pp. 65 & 66).” He sees Jesus as embodiment of God’s justice, and his way as non-retaliation.

Marshall considers also the “*Purpose and Ethics of Punishment*”, and after discussing all the main theories holds out for the biblical notion of “Restorative Punishment”, by which he means “*Punishment as the Pain of Taking Responsibility*”. He retains the word “punishment”, but first empties it of all its punitive thrust, then reinvests it with an accountability/responsibility payload.

“Restoration, not retribution, is the hallmark of God’s justice and is God’s final word in history (*ibid*, p. 199).”, Marshall claims.

Not surprisingly, Marshall also finds no biblical mandate for the death penalty.

In his final section he presents “*Forgiveness as the Consummation of Justice*”. Marshall discusses the South African Truth and Reconciliation Commission headed by Archbishop Desmond Tutu as illustrative of the attempt at a state-wide process and application of forgiveness and accountability in post-apartheid South Africa. Marshall quotes Tutu saying, “[W]ithout forgiveness, there is no future (*ibid*, p. 283).”<sup>8</sup> This conclusion is similarly argued on a macro political level persuasively in Donald Shriver’s *An Ethic for*

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<sup>6</sup> In *Scapegoats, the Bible, and Criminal Justice: Interacting with René Girard* (1993), Vern Redekop asks: “Is it possible that what we call a criminal justice system is really a scapegoat mechanism?” His response is: “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.” He concludes: “It is possible to think of the criminal justice system as one gigantic scapegoat mechanism for society (pp. 1, 16, and 33).”, and illustrates convincingly.

<sup>7</sup> A similar orientation is found in the publication *The Spiritual Roots of Restorative Justice* (Hadley, 2001), to which this presenter co-contributed the chapter on Christianity. It is also reflected in *God’s Just Vengeance* (Gorringe, 1996). It is germane to point out that the impetus for these publications was the already established tradition from the Christian faith community of rereading its sacred texts in a nonsacrificial way, in the direction of Restorative Justice.

<sup>8</sup> Almost title of Tutu’s magisterial reflection on Restorative Justice (2000), through the story of the Truth and Reconciliation Commission, which Tutu headed from its inception. It is reviewed in *Catholic New Times* (Northey, 2002).

*Enemies: Forgiveness in Politics* (1995). Shriver explains that *forgive and forget* gives way to *remember, forgive, and be free*.

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 and pagans on a grand scale, to lead Crusades and persecute others during the Inquisition until blood repeatedly ran in the streets, to destroy their fellow Reformationists, the Anabaptists, by the thousands in surrounding rivers and lakes, and so on, reversed what the Cross had originally stood for in Jesus’ death and resurrection.

The modern prison was to drastically grow during the 19<sup>th</sup> century as a new more humane form of punishment, but the punitive attitude of the church remained alive and well in the modern “penitentiary” – originally designed religiously to make the criminal “penitent”. With the birth of the modern penitentiary in the late 18<sup>th</sup> century, argues Michel Foucault, violent punishment merely shifted from the body to now the *very soul* of the wrongdoer (Foucault, 1977), however well-meaning was the intent. Those psychological wounds often proved, and prove still, nearly impossible to heal.

It has taken until the latter half of the 20<sup>th</sup> century for some in the church to come alive to its own biblical moorings in redemption, reconciliation, and restorative justice, in response to the highly punitive church-directed retributive system in Western criminal law.

Over the centuries, in the area of criminal justice, the Christian church moved from a theology of grace and servanthood to a theology of law and punishment. The question must be asked: *Will the Restorative Justice treasure remain deeply buried or will the Christian church have the courage to raise a consistent prophetic voice within the criminal justice system today?* A decisive engagement continues to be urgently needed worldwide.

I leave that question with you to discuss afterwards, if you wish.

Thank you.

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