

Restorative Justice Stories - MCCC 50th Anniversary, December 14, 2013

Introduction

It is an honour to share about the work of MCCC in Restorative Justice. For almost 10 years in the nineties, I invariably came to all major MCCC meetings here – in mid-January of all things! My ex-Winnipeg friends tell me it's freeze your buns off in winter or the buzz-slap of Mosquito Season in summer!...

My first Mennonite joke I heard in Winnipeg was from an obviously irreverent taxi driver when I arrived in mid-January for my first MCCC gathering:

“What do you call”, he asked, “a Mennonite at Portage and Main at 40 below with his fly open? [Pause] *Dick Freezin'!*” To which a Mennonite friend recently added: “And what do you call such a Mennonite fifteen minutes later? [Pause] *Dick Froze!*”

A Few Stories

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 vehicles, homes, and properties... So begins a long since world famous story in Restorative Justice circles with MCC front and centre. You may very well have read or heard it!

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/peacemaking was a central concept of their Christian faith. (As a quick aside, this central New Testament concept of *reconciliation* embraced from the outset by MCC and other practitioners, has largely been displaced in the worldwide secularization of Restorative Justice. This is, I suggest, a significant ethical and biblical epistemological loss to the international movement.)

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 he said 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 so with all but one victim. Nobody got bloody noses either, and out of that experience arose the first ever “Victim Offender Reconciliation Project (VORP)”. (It later became a “Program” once more established.)

“The Elmira Case” model proved to be a kind of proverbial shot that echoed around the world. Hundreds of 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 now exist worldwide.

Interestingly, Judge McConnell was known to have been a kind of “hanging judge” who played strictly by the rules. He was also bluntly honest. He once arrived at an in-house session of judges, lawyers and probation officers that I attended, and declared: “I’ve just spent a useless day in court trying to dispense justice, but serving nobody!” Recollection of that expressed frustration always makes me think of a famous U.S. counterpart, Justice Oliver Wendell Holmes, Jr. Another Judge once said to Justice Holmes as the Justice left for the Supreme Court: ‘Well, sir, goodbye. Do justice!’ Justice Holmes gave a sharp retort: ‘That is not my job. My job is to play the game according to the rules.’ ”¹

There is an obvious truism here: the better a lawyer knows the rules, the more skilled a lawyer is at the “game” called justice, such a “Babe Ruth” will better serve the client – the Queen or the accused. That kind of heavy hitter as in real baseball comes however at a high price, that precious few can ever afford. There is a longstanding saying: “Justice is how much one can afford.” Both versions of the classic movie *12 Angry Men*, demonstrate this point dramatically.

Interestingly as well, when I left Kitchener in 1979 and my early work in Restorative Justice with Dave Worth, Mark Yantzi, Dean Peachy, and several others, I asked Judge McConnell for a reference letter. That letter helped me land my first job with M2/W2 in 1980 – of which agency I currently serve as Executive Director. *Please do not tell anyone: but upon reading that letter, I was convinced it was about my good friend Dave Worth, and not about me at all!* So all these years, I’ve been at M2/W2 under false pretences. And it was not the only time Dave Worth and I were confused: due to a combination of similar height and appearance, of work in a rather small Restorative Justice club membership in those early days, and of surnames of which I was genuinely not *worthy*...

Stories of Early Ideas and Sources

As to some of those early Restorative Justice ideas and their sources we were all reading: The now defunct Law Reform Commission’s repeated claim over the years has been: *There is one law for the rich, another for the poor.* Jeffrey Reiman in 1979 captured the point *arrestingly* (double pun intended) in his book title, *The Rich Get Richer and the Poor Get Prison*².

¹ Kozy, John (2011). “The American Legal System: A Ball Game Played by Lawyers and Jurists: The Why of Not Doing the Right Thing” Global Research, November 15, 2011, <http://www.globalresearch.ca/the-american-legal-system-a-ball-game-played-by-lawyers-and-jurists/27684>, last accessed October 11, 2013.

² Reiman, Jeffrey, *The Rich Get Richer and the Poor Get Prison* (2000). Boston: Allyn & Bacon. “The basic premise of this text is that the criminal justice system is biased against the poor from start to finish - from the definition of what constitutes a crime through the process of arrest, trial, and sentencing. The author argues that actions of well-off people - refusal to make workplaces safe, refusal to curtail deadly pollution, promotion of unnecessary surgery, prescription of unnecessary drugs, etc. - cause occupational and environmental hazards to innocent members of the public and produce as much death, destruction, and financial loss as so-called crimes of the poor. However, these acts of the well-off are rarely treated as crimes, and when they are, they are never treated as severely as crimes of the poor. Reiman documents the extent of anti-poor bias in arrest, conviction, and sentencing practices and shows that the bias is conjoined with a general refusal to remedy the causes of crime - poverty, poor education, and discrimination. As a result, the Criminal Justice system fails to reduce crime. The author uses numerous studies and examples to illustrate his points, and difficult concepts are explained in a non-technical manner. The book is a useful counter to the uproar about crime. It provokes thought and discussion, even among

Jonathan Swift of *Gulliver's Travels* fame, also a brilliant social critic, and Ottawa-based Church Council on Justice and Corrections similarly expressed (the latter on a poster years ago): "*Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through.*"

My first exposure to Restorative Justice began however not through The Elmira Case, but in 1974 through joining Man-to-Man/Woman-to-Woman in BC as a seminary student at the University of British Columbia. My seminary studies instilled in me a lifelong approach to vocation, namely: *think vocation through christianly*. Which I began to do then, and 40 years later still am working at. In fact, theologian Stanley Hauerwas argues that that is the only way of theology – namely endless dialogue, as theologian Karl Barth demonstrated in his massive unfinished *Church Dogmatics*; and as Martin Buber argued, using an early Restorative Justice concept that Dave Worth loved: *endless palaver!* Restorative Justice involves *endless palaver*. So it is in one's entire life with God and others.

Clark Pinnock was not only a new professor at Regent College who modelled this kind of constant revisioning, he also modelled being an M2 volunteer, and faithfully drove another seminary theologian and me to and from Oakalla Prison in Burnaby in 1974 and 1975. I am forever indebted to Pinnock for his first introduction to me of generic theological "restorative justice", and for leading this fundamentalist seminary student through two lifelong conversions. *One* that Judeo-Christian revelation actually pulsed with the *social/political*; *two* that the way for the state to do politics faithful to the Judeo-Christian tradition was *the nonviolent way of the cross*.

The first M2/W2 prison visitation program began in BC in 1966; several other programs from Alberta to Ontario were in the subsequent years modelled after that in BC, and eventually one was established in Newfoundland: all due to Mennonites with a Restorative Justice vision. Except in BC, there was a broad denominational support, not only Mennonite, of M2/W2.

A year after The Elmira Case, in January 1975 a young professor named Clark Pinnock at Regent College on the Vancouver UBC campus taught a three-week interterm course entitled "The Politics of Jesus", based on Mennonite theologian John Howard Yoder's book published in 1972 by the same title. Stanley Hauerwas, "America's best theologian" (so *Time* magazine claimed in 2001) once wrote in *The Christian Century*: "I am convinced that when Christians look back on this [20th] century of theology in [North] America *The Politics Of Jesus* will be seen as a new beginning."³

It was so for me: *a new beginning*, and it fed profoundly my embrace of Restorative Justice. I was raised in a "quintessential fundamentalist" tradition, as Church historian Ernest Sandeen dubbed it, called Plymouth or Christian Brethrenism. The only text we had to read for that 1975 interterm course was Yoder's book, and we had to turn in an essay on it. I initially *did not* read

people who disagree with its content." - <http://www.amazon.ca/Rich-Get-Richer-Poor-Prison/dp/0205305571>, last accessed October 12, 2013.

³ Quoted in: *The Christian Century* October 13, 1993, "When The Politics of Jesus Makes a Difference", pp. 982-987, Stanley Hauerwas, copyright by the Christian Century Foundation, <http://www.religion-online.org/showarticle.asp?title=109>, accessed October 9, 2013.

much of it – so offensive was it to my then Pietistic/fundamentalist theological sensibilities! I handed in a fudged review. I passed the course, and only later avidly read and reread Yoder, and some of his favourites like Karl Barth (can one ever read through his entire *Church Dogmatics*? – at least he could never, wisely/providentially, complete it). I read others who love Yoder’s theology: like James William McClendon Jr. and Stanley Hauerwas, who likewise traced their nonviolent conversions to reading Yoder.

Current Stories of Ideas and Sources

Such central Christian nonviolence/just peacemaking for most in the Western Christian tradition has been unthinkable. Consider three instances of dominant theological/political justice theory about treatment of enemies:

- *just war* (international state enemies (“enemy combatants” - and a host of “collateral non-combatants”) may justly be disposed of);
- *just deserts* (domestic state enemies (“criminals”) may justly be disposed of);
- *just hell* of eternal conscious punishment for the Church’s enemies/unbelievers/heretics who in the after-life may justly be disposed of by God with a pure hatred *for all eternity!*

This last justice theory about the church’s spiritual enemies in fact informs the first two and has permitted over the past 16 centuries mass slaughter by the state of all above enemies in the so-called “civilized” West. “Kill them all, God will know his own”, is the West’s mantra, first declared by a papal legate at Béziers France about the papal armies responding to the Church’s heretics of southern France in 1200.⁴ Instance of its secular counterpart was World War II American General General Curtis LeMay in charge of Pacific operations, who in 1945 declared that “we scorched and boiled and baked to death more people in Tokyo on that night of March 9-10 than went up in vapor at Hiroshima and Nagasaki combined”. His numbers were wrong, but about 100,000 innocent civilians of all ages and gender were immolated by an all-night American bombing campaign against non-combatants, March 9 & 10, 1945. The Western state with the Church’s blessing repeatedly has expedited God’s so-claimed *just hell* policy in mass slaughter of its enemies.

Archbishop Desmond Tutu wrote a book about “God’s Dream”⁵, drawing on Martin Luther King Jr.’s famous speech: “I Have a Dream”. This is a dream well articulated by Yoder, and is captured in the term “Restorative Justice”. Tutu’s earlier book, *No Future Without Forgiveness*⁶, in fact tells the story of the South African Truth and Reconciliation Commission in the context of Restorative Justice.

Restorative Justice taken to its theological conclusion articulates an ever emergent theological/philosophical tradition in direct contradiction of *just war*, *just deserts*, and *just hell*.

⁴ The papal legate Arnaud Amaury in the early 13th century, in response to the question of how to know who are the faithful Catholics and who are the heretics, instructed the papal armies in a crusade against the heretical Albigensians/Cathars in southern France: “Kill them all, God will know his own”. The massacre of 20,000 villagers at Béziers in southern France ensued, and up to a million “heretics” were murdered in the end.

⁵ Tutu, Desmond and Douglas Abrams (2004). *God Has a Dream: A Vision of Hope for Our Time*, New York: Doubleday.

⁶ Tutu, Desmond Mpilo (1999). *No Future Without Forgiveness*, New York: Doubleday.

The recently released narrative translation of the Bible called *The Voice*⁷ highlights the term “restorative justice” in Romans 3:21: “*But now for the good news: God’s restorative justice has entered the world, independent of the law...*” This is a masterful, conceptually authentic rendering of the text with the very language MCC through its practice introduced to a wider, waiting humanity! “*But now for the good news: God’s restorative justice has entered the world, independent of the law...*” Wow!

New Testament theologian Chris Marshall has so far developed the theology of Restorative Justice the most extensively in his two publications: *Beyond Retribution*; and *Compassionate Justice*⁸. Upcoming scholars like Stephen Siemens with MCCC will be doubtlessly pointing the way in the future.

Like all who know and care however, I have also been devastated by Yoder’s abuse of women. Stanley Hauerwas in his recent memoir thankfully does not fudge on that tragedy. Hauerwas maintains though that Yoder rightfully occupies a towering place in late 20th-century New Testament political ethics. I do not know enough to disagree. This is however hardly consoling to Yoder’s victims.

In the late eighties, Yoder further introduced our emerging MCC Canada and US Restorative Justice network to the work of René Girard and the Colloquium on Violence and Religion begun around his ideas in 1990. Eventually, Vern Redekop, then with the Church Council on Justice and Corrections, an inter-church Restorative Justice agency in Ottawa, in response to Yoder’s urging wrote one of the bestselling ever MCC “Occasional Papers”⁹ on criminal justice.

Redekop’s paper was on Girard’s work in relation to contemporary Western criminal justice systems seen as “scapegoat mechanisms”. In Redekop’s view, the self-deceived majority of “law-abiding” citizens turn invariably on the minority “bad guys” in scapegoating violence. Because it is a “mythology” however, “we/they” do not know it – it is hidden (like Jesus’ words about *his* crucifiers/scapegoaters). “The scapegoat mechanism” in society is a destructive mythology that authorizes violence, claims Redekop, now at Saint Paul University’s (Ottawa) “Conflict Studies” Department.

Corroboration came the year after his paper was published by MCC in Thomas Gabor’s ground-breaking publication, *‘Everybody Does It!’: Crime by the Public*¹⁰. From a vast array of original research and criminological/sociological findings, Gabor virtually buried any notion of the existence of a class in Western democracies known as “the law-abiding”. His subtitle might have been: “*No one is righteous – not even one* (Romans 3:10b, *The Voice*).” The classic book

⁷ *The Voice Bible* (2012). Ecclesia Bible Society, Nashville: Thomas Nelson, Inc.

⁸ Marshall, Chris (2001). *Beyond Retribution: A New Testament Vision for Justice, Crime, and Punishment*, Christopher D. Marshall, William B. Eerdmans Publishing Company (2012). *Compassionate Justice: An Interdisciplinary Dialogue with Two Gospel Parables on Law, Crime, and Restorative Justice*, Eugene: Wipf and Stock.

⁹ Redekop, V. (1993). *Scapegoats, the Bible and Criminal Justice: Interacting with René Girard*, Akron: Mennonite Central Committee, 50 pages.

¹⁰ Gabor, Thomas (1994). *‘Everybody Does It!’: Crime By the Public*, University of Toronto Press, Toronto.

on this kind of scapegoating violence towards convicted “criminals” was Karl Menninger’s *The Crime of Punishment*¹¹, which title expresses the well-researched thesis.

There were fourteen MCC “Occasional Papers” in all on criminal justice; a series begun by Dave Worth and Howard Zehr. Many have been reprinted now in the British journal *Justice Reflections* that is sent to chaplains in over 60 countries under the auspices of the International Prison Chaplaincy Association. I say readily: Thank you Dr. Yoder for your great contribution to Restorative Justice!

Further, it was at Yoder’s urging that Dave Worth of early MCCC leadership in Restorative Justice, to whom I’ll return, twenty-five years ago sent me a copy of Girard’s influential *Violence and the Sacred*¹² to review for the MCCC newsletter, *Accord* that he – and later I – edited. (Its predecessor was Edgar Epp’s *Release*). I looked through that very book copy as I prepared this talk. I found lots of underlining and asterisks. But I told Dave Worth that I did not understand enough of the book to review it. I’m grateful that Vern Redekop blazed the trail for the Restorative Justice crowd back then through Yoder in introducing René Girard to wider Restorative Justice dialogue.

I had read at this time in French sociologist/theologian Jacques Ellul’s book, *Jesus and Marx*, about a non-academically trained theologian, René Girard, who probably, Ellul thought, would never attract the notice of his biblical scholarly counterparts because of his nonsacrificial and non-ideological way of reading the Bible¹³. I was intrigued. The publication of Brad Jersak’s and Michael Hardin’s *Stricken By God?*¹⁴ with chapters by twenty theologians from all the major Christian denominations, and with a Foreword by magisterial Mennonite New Testament peace theologian Willard Swartley, and other publications, put the corrective to that. My chapter in Jersak’s and Hardin’s book was in the context of Restorative Justice. It is *precisely* Girard’s nonviolent reading of the atonement that has attracted worldwide interest amongst theologians – and that is so applicable to Restorative Justice theory.

Dave Worth was for me the most affable of all colleagues in MCC Restorative Justice circles. As it turned out, he with Mark Yantzi, also proved to be world famous in Restorative Justice circles due to what became known, as mentioned, in many publications as “The Elmira Case”¹⁵.

¹¹ Menninger, Karl (1968). *The Crime of Punishment*, New York: Penguin Books.

¹² Girard, René (1977). *Violence and the Sacred*, Baltimore and London: The John Hopkins University Press.

¹³ “Recently we have witnessed the appearance of a new interpretation grill presented by René Girard in *Des choses cachées depuis la fondation du monde* (Paris: Grasset, 1978), a nonsacrificial interpretation of biblical texts. Rather than presenting merely another interpretation, Girard gives us a genuine method. Since it fits no ideological canon, I feel certain it will never attract notice or be taken into account by biblical scholars.” Ellul, Jacques (1988). *Jesus and Marx: From Gospel to Ideology*, translated by Joyce Main Hanks, Grand Rapids: Eerdmans, p. 86.

¹⁴ Jersak, Brad & Michael Hardin (2007). *Stricken By God?: Nonviolent Identification & The Victory of Christ*, Grand Rapids: Eerdmans.

¹⁵ See Peachey, Dean (1989). “The Kitchener Experiment”, Martin Wright and Burt Galaway, eds., *Mediation and Criminal Justice: Victims, Community, and Offenders*, Newbury Park, CA: Sage Publications; and Nyp, Gary (2004). *Pioneers of Peace: The History of Community Justice Initiatives in the Waterloo Region 1974 – 2004*, Kitchener: Community Justice Initiatives.

We in the Restorative Justice early days were all reading such above-mentioned books and discussing such culturally subversive ideas, just as “The Elmira Case” shot began echoing around the world. There was it seemed an inevitability in Restorative Justice’s spread to far-flung cultures worldwide, seemingly so diverse. Mennonites *do not* call that “fate” rather “God’s hand”.

Conclusion

Written on the early notepads we used to distribute widely to judges and lawyers about the fledgling “Victim Offender Reconciliation Project”, which grew out of “Elmira”, we quoted a then recent 1976 statement by the Law Reform Commission of Canada, “Reconciliation is an important part of the criminal justice system.” The only problem then was: hardly anyone in the system seemed to have any idea of that!

But time came, wonder of wonders, when they did!

Before continuing with that, a quick digression: I stumbled into that early Restorative Justice picture by becoming a VSer (Voluntary Service worker) and was in 1977 the second Director of VORP (and another “Volunteer Probation Program”), after first Director Evan Miller finished his VS term. In 1976 Edgar Epp had become the first “Director of Victim Offender Ministries – VOM” - for all North America, under MCCC and MCCUS. When Dave Worth took over from him, the position was eventually divided between Worth and an American, Howard Zehr. I eventually took over from Dave Worth in 1989 as “Director of VOM” for MCCC when he became Director of MCC Ontario.

To continue with the “wonder of wonders”: For many years, Carol Riekman gave leadership to Saskatchewan Mediation Services. Once in a phone check-in that I did monthly with the twenty-plus MCCC-connected programs across Canada, Carol and I developed an image of MCCC Restorative Justice programs. We thought of them as a bunch of little speed boats buzzing about the ocean with (by then) tattered Restorative Justice signs, frequently fearing running out of gas, but trying to attract interest from the big government ocean liners in hopes they might take a look at this amazing thing called “Restorative Justice”.

Then suddenly, one day, some of our little speed boats were overwhelmed by an ocean liner horn blast, almost swamped in its wake, and we were *utterly* amazed to see beautifully emblazoned on its side in massive letters (like we could only dream with our meagre budgets): **RESTORATIVE JUSTICE IS THE NEW JUSTICE PARADIGM!** Yes, Restorative Justice had arrived – *with a vengeance!* Eventually that became the very problem: the word “*vengeance*” seemed almost impossible to eradicate in government criminal justice policies the world over, even when the “massive ocean liners” had been painted over with new signage. “A rose by any other name...” is ineluctable wisdom here... A great chorus of experts across Canada has seen in the plethora of current government new legislation a virulent re-emergence of the social virus called scapegoating “*vengeance*”; indeed vengeance re-emergent *with a vengeance* to the level of a

debilitating social and financial super virus that as one Ontario judge put it, has turned “bedrock principles of criminal law upside down.”¹⁶

The defunct Law Reform Commission of Canada claimed in 1976: “*Reconciliation is an important part of criminal justice.*” The prophet Amos put it slightly differently to the faith community of his day. It is God’s declaration through Amos (with the adjective “restorative” added):

*Here’s what I want: Let [restorative] justice thunder down like a waterfall;
let righteousness flow like a mighty river that never runs dry (Amos 5:24, The Voice).*

Mennonite Central Committee Canada to criminal justice has been that *thunderous waterfall* in the past 50 years. May indeed this *mighty river never run dry!*

Thank you.

¹⁶ Makin, Kirk, “Federal crime legislation casts ‘dark shadow’ on principles of justice, Ontario judge says”, *The Globe and Mail*, May 2, 2013, <http://www.theglobeandmail.com/news/politics/federal-crime-legislation-casts-dark-shadow-on-principles-of-justice-ontario-judge-says/article11692458/>, last accessed October 12, 2013.