

# Rediscovering Spiritual Roots: The Judeo-Christian Tradition and Criminal Justice

By Wayne Northey\*

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It begins and ends with [Claire Culhane](#), one of the women to whom I dedicate this series. She together with Quaker [Ruth Morris](#), another woman to whom I dedicate these writings, was awarded the Order of Canada. Both were fearless and very vocal critics of the “prison industrial complex”, which Nils Christie insisted was the true and present danger in Western society, not the criminals in their confines; that punishment itself was a crime in the words of psychologist Karl Menninger. Claire Culhane once told me the difference between her and Ruth Morris was: Ruth was religious, Claire was not.

I later co-authored a piece for similarly themed [The Spiritual Roots of Restorative Justice](#) with [Pierre Allard](#), a variation of which is the last chapter of *Volume One*. I repeatedly returned to this theme over the years. Hence there is evident overlap in chapters of this series.

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## Abstract

*The Judeo-Christian tradition arguably most impacted contemporary Western jurisprudence, leaving mainly a retributive, non-restorative, stamp.*

*The essay discusses three representative points of revision of the tradition: the biblical concept of justice, in particular the idea of tzedeka, whereby emphasis is placed upon the outcome of justice, one of healing and reintegration; the dynamic of scapegoating by which Western criminal justice systems may be seen as “scapegoating mechanisms” for a violence-prone culture, and the way out of this kind of punitiveness through inclusive forms of justice-making; and forgiveness, which challenges towards a self-transcendence without which victims wallow in unhealthy pathologies.*

## Introduction

As I write, May, 1996, Canada mourns the April 28 unexpected passing of one of its most passionate crusaders for justice, Claire Culhane, 1995 recipient of the Order of Canada, our highest honour. Her biography was entitled *One Woman Army* (Lowe, 1992). A “pagan humanist friend” by her oft-

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He serves as a volunteer mediator, prison visitor, and board member on two local programs doing mediation in crime and prison visitation. He holds an Honours B.A. in French and German, and a Masters in Theological Studies. He is active in a Mennonite church, and has a wife and three children.

repeated playful self-designation in correspondence, she was nonetheless deeply gripped by the Hebrew concept of *tsedeka*, though she had as a young girl abandoned any formal faith links with her Jewish background. Her entire life was however an instance of the secular applicability of the Judeo-Christian tradition, from whose wells she unknowingly drank, in whose prophetic tradition she partly found herself.

Drawing on “religion” for public discourse in the secular West is fraught with danger. Ignoring this foundational wellspring of Western society is however doubly a disservice. First it misses the profound impact of Judeo-Christian scriptures and their interpretations upon Western concepts of and development of justice and related systems (for better or worse)<sup>1</sup>. Second, it overlooks the wisdom such religious wellsprings still may bring to the shaping of justice systems<sup>2</sup>. Judeo-Christianity draws upon profound ancient wisdom and has engaged many brilliant minds generally in dialogue with highly sophisticated thinkers outside that tradition.

This essay is a look at some aspects of the Judeo-Christian tradition for a vision of justice that has “healing in its wings”, to use biblical imagery. It will begin with consideration of Herman Bianchi’s explication of biblically based *tsedeka* justice, then look at the impact of the Jesus story upon the concept of scapegoating as developed in the work of René Girard<sup>3</sup> and many others, and finally move to a consideration of forgiveness in the Judeo-Christian tradition. An eye will be kept on the applicability in each case to theory and practice within criminal justice. There is such a wealth of recent biblical studies being published with relevance to work in the criminal justice system, that these three areas of inquiry must be understood to be representative only of many other points of confluence between the Bible, its interpretative literature, and criminal justice work.

If Bianchi’s book and this essay strike secular readers as “strange” for one reason (its “religious” ring), it is perhaps some consolation that the concepts and consequent criminal justice practices here presented for many, perhaps most, within the various Judeo-Christian traditions present also as strange for other reasons (their peacemaking dynamics!) If, as one Catholic scholar hoped after people viewed Martin Scorsese’s *The Last Temptation of Christ*, the film points one to the yet more interesting source, this essay induces some to look more closely at the fascinating “homeopathic” work being done by Judeo-Christian interpreters, and to the Bible itself, a good purpose will have been served. It is this writer’s contention that the most profound kind of personal and political radicalism is at work in the warp and woof of the Bible: one of self-giving, self-emptying love of which this world is in desperately short supply.

### ***Tsedeka* Justice**

Herman Bianchi is a retired criminologist formerly at the Free University of Amsterdam. Through the persistence of North American friends, the book *Justice as Sanctuary*, first published nine years earlier in Dutch, finally appeared in polished English after Bianchi’s retirement (1994<sup>4</sup>). Author of

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<sup>1</sup> See *Law and Revolution* (Berman, 1983).

<sup>2</sup> Christian philosopher Jacques Maritain sought to correct certain Christian teachings through a “homeopathic” method of revisiting the sources (Bianchi, 1994). Many contemporary Christian and Jewish interpreters are doing the same *vis à vis* a punitive reading of the Bible. This essay is one brief attempt.

<sup>3</sup> Girard indicates that “Christianity” in the academy is the last politically correct scapegoat (Hamerton-Kelly, 1994, p. xi).

My teen-aged son has observed that in our culture any spirituality is readily acceptable – except Christian versions. There are good historical reasons why Christianity has been so eschewed, for it has often shown the world an ugly, oppressive face so contrary to the way of Jesus. Further, no attitude is so disliked ultimately as self-righteousness (often in religious guise), ironically, however, an attitude more strongly critiqued by Jesus than any other world religion leader. Alistair Kee’s historical study, *Constantine versus Christ* (1982) addresses the first concern, the Gospel of Matthew, Chapter 23, illustrates the second.

<sup>4</sup> All subsequent page numbers are from this publication.

several books, Bianchi gives us here his most comprehensive statement about justice, drawing upon the biblical notion of “*tsedeka*”<sup>5</sup> which may be simply translated as “justice”. Giving that variously nuanced word content is the burden of Bianchi’s work. The subtitle indicates his direction: “Toward a New System of Crime Control.”

His first chapter discusses the concept of justice. He proposes a *tsedeka* model, alluding to its greater antiquity than the Aristotelian “Give everyone his due.” (The term *tsedeka* occurs 157 times throughout the Hebrew Bible, as does the related *tsedeq*, found 119 times. The adjective *tsaddiq* appears 206 times. They constitute a central biblical Hebrew concept.) For Bianchi the power of this idea is not based upon a religious notion of “revelation” from God, rather upon its ability to sensitize us and point another way.

Bianchi is decidedly secularist in his approach to the Hebrew Bible.

A provisional definition early in the chapter on *tsedeka* proves to be his final: not an intention, but the incessant diligence to make people experience the genuine substantiation of confirmed truth, rights, and duties and the eventual release from guilt, within a system of eunomic [healing, reintegrative] law (p. 48).

### ***Two Rapists and Their Victims***

In one major Canadian city, a rapist terrorized the population. Only after becoming Canada’s most notorious serial rapist was he apprehended and given a life sentence. Ten years into his term the media forced the cancellation of subsequent escorted temporary absences when it was discovered he was obtaining golfing passes! Notice was taken by the survivors’ group in the city of his crimes. Upon resultant contact with Correctional Services Canada (CSC) two of the rape victims arranged to meet with the rapist through the auspices of a federal government funded pilot project<sup>6</sup>. The case development period extended over several months. Both women decided subsequently to allow national media coverage of their experience. Both told their part of the story, but adamantly refused to tell any of the rapist’s. One woman described the experience as a “new birth”. The other, for the first time in the decade since the rape, could listen to the kind of music the kicked over radio had begun to play during the rape. Both have since released all records of the encounters to the discretionary use of the agency, urging its services be widely available to similar victims. The rapist, initially considered by us on the agency’s board less likely to benefit from the encounters, shortly afterwards wrote:

*I can’t say enough about the value of victim offender meetings when a victim and offender are ready and willing to meet. Being able to speak the truth, to take responsibility for the crime, is crucial for me to do and for the women to hear. The victim’s gain is obvious: a new degree of healing; and I, as an offender, have benefitted greatly. They have met me in their humanness, and in that I have found more of my own.*

The husband of a rape victim in another case wrote in part:

*I had to deal with my feelings toward the offender, which was that he should be confined and punished forever, and any talk of his healing stuck in my craw. I now realize that offenders do eventually rejoin society and if healing on his behalf has not been achieved then there is a good chance of more harm being done.*

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<sup>5</sup> Other transliterations are *tsedeqah* or *tsedaqah*, or each without the “t”.

<sup>6</sup> The “pilot phase” was evaluated so positively after its first year that it has been for six years a fully funded program on contract with the CSC. A second major evaluation was completed with glowing praise in 1995 (Roberts). The program’s mandate (called Victim Offender Mediation Project, operated by the non-profit Fraser Region Community Justice Initiatives Association of British Columbia) is to facilitate a process of therapeutic dialogue in all categories of serious and violent crime in the Criminal Code of Canada.

*Also, it has become clear to me that most offenders are themselves victims and that some of their victims go on themselves to become offenders. The cost of this cycle to society is astronomical and therefore the value to society of breaking the cycle is also astronomical.*

He began his letter by using all the superlatives he could muster to declare the good of the program in particular for his wife, also for his family, decrying the inadequacy of mere words to convey his feelings (Northey, 1994, pp. 12 - 14).

The Case Management Officer (of 40 years' Corrections experience) in the first case story wrote:

*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 the victims and the inmates, again and again. I see them when they come in, and I see their demeanour when they leave again 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* (Northey, 1994, p. 38).

Such a program, nurtured on the tenets of *tsedeka* justice, indeed [helps] people experience the genuine substantiation of confirmed truth, rights, and duties and the eventual release from guilt, within a system of eunomic [healing, reintegrative] law.

Bianchi contrasts the "*tsedeka* model" with the conventional "justice model". "Give everyone his due" in the latter leaves the *status quo* unchallenged, whereas in *tsedeka* there is a constant dynamic of change. Intention is paramount in the latter, results, "a genuine experience of justice"<sup>7</sup> in the former.

A tree is recognized by its fruit... (Matt. 12:33) is the Judeo-Christian wisdom about the primacy of the *outcome* of justice. So, has said Bianchi elsewhere<sup>8</sup>, though the intention of prison reformers was, in initiating the "American penitentiary experiment" in 1790, to better the lot of criminals, in fact, the results were ever afterwards disastrous, a fact so thoroughly documented as not to need repetition<sup>9</sup>.

Howard Zehr provides a helpful comparative chart in discussing similarly the difference between contemporary and biblical notions/practices of justice (1990, pp. 151 & 152). In his discussion of Hebrew concepts of justice, he further underscores "shalom" and "covenant" as foundational to biblical justice, terms not readily accessible to secular readers. He sums up: Biblical justice focuses on right relationships, not right rules (1990, p. 153).

Many contemporary biblical exegetes have attempted to lay to rest the persistent misinformation that "an eye for an eye" retributive form of justice is the central theme of biblical justice! The death notices unfortunately still are not widely published. To say, "But it's in the Bible!" is about as informed as saying "Polygamy is in the Bible." "Shalom" in its multifaceted peacemaking dynamism is the central theme of biblical or *tsedeka* justice. In this, the Judeo-Christian tradition joins company with many other spiritualities where peace, wholeness, restoration and harmony are the dominant concerns of doing justice.

Why then, one may ask Bianchi, did the notion and practice of "punitive justice" still so central to

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<sup>7</sup> This is the testimonial of the vast majority of all parties, participant in more than 200 mediation programs across North America, and hundreds more around the world. See Umbreit (1994).

<sup>8</sup> Keynote presentation at ICOPA II, 1985, Amsterdam.

<sup>9</sup> See Mathiessen (1990).

contemporary Western jurisprudence ever take such seemingly ineradicable root? Here and elsewhere Bianchi refers to an historical “short circuit” whereby Roman punitive slave law, brutal and merciless, conspired with a misplaced primacy of biblical retributive law (*lex talionis*) to give the West an “evil potion” of retributive justice (pp. 14ff; Bianchi, 1973)<sup>10</sup>. In this, as already indicated, Christian theological interpretations of the atonement (what the church believed the story and mission of Jesus meant) developed by Anselm and later Thomas Aquinas in the 11th and 13th centuries locked in on a punitive notion of God’s justice, including a central image of God as (Hanging) Judge out of all proportion to its presence in Judeo-Christian scriptures<sup>11</sup>. There is much else of interest in the initial 48-page essay of Bianchi that makes up Chapter 1, “The Idea of Justice”. One may quibble at times, though Bianchi makes it clear he is not a theologian! What he does in the subsequent chapters to apply this theory of *tsedeka* justice is certainly fruitful for agencies in our network actively seeking to use such principles. Even here sociologist Peter Cordella says in a review of the book,

The volume under view I also strongly recommend, not so much for its conclusions with which I have some serious sociological reservations but for its bold attempt to reformulate the dominant theoretical perspective on social control (1995, p. 20).

Further chapters on “Two Concepts of Law: Anomic and Eunomic”; “The Assensus Model”; “Sanctuary”; “Strategies for Change”, and a final “Conclusions” section deserve careful reading to learn from someone considered by some to be the grandfather of the contemporary restorative justice movement.

### **Scapegoating**

In moving on to this theme, Bianchi offers a transition in the Preface to *Justice as Sanctuary*: Making conscious use of religious principles is better than ignoring them, given that crime control has always been based on religious beliefs of whatever creed (1994, p. x).

So has violence always been closely connected to the sacred, argues René Girard (1977). And punitive crime control in the end is violence. Not surprisingly punitive violence has for centuries been sanctioned by the dominant Western sacred tradition, Christianity, in support of the state’s treatment of its international enemies (through “just war”), and in buttressing the state’s treatment of its domestic enemies (through “just deserts”).

That the Western church in fact first modeled punitive violence in response to its heretics during the Inquisition, and at many other points in its history, including during and after the Reformation, is the primary explanation for the Western state’s easy recourse to punitive atrocities towards its social heretics, the criminals (Bianchi, 1994, pp. 16 & 17).

That Martin Luther, leader of the Protestant Reformation, could instruct the German nobility to “Smite, slay and kill” all the peasants they could to quell an early 16th century uprising sounds little different from (U.S.) Air Force General Curtis LeMay’s instructions to “scorch, boil, and bake to death” masses of urban Japanese in firebombing raids on over 66 Japanese cities that, combined with the dropping of two atomic bombs, left an estimated 400,000 civilians dead in the closing months of World War II.

At its starkest, the Western religious tradition has sanctioned or directed unimaginable violence against countless millions throughout its history (107 millions in this century alone) in the name of the sacred, in the name of Jesus, who nonetheless taught and exemplified consistently:

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<sup>10</sup> See also Zehr (1990), pp. 154ff.

<sup>11</sup> In the Christian scriptures, God as “Judge” does not appear on Jesus’ lips once, whereas God as “Father” appears 177 times! “Father” for Jesus was the opposite of a domineering, unforgiving, disciplinarian judge, the inversion of any notion of patriarchy. This is best demonstrated in the story Jesus tells of what God the Father is like (Luke 15:12 - 32). Often entitled “The Prodigal Son”, it really is a story of “The Prodigal Father”.

Love [Draw a circle of inclusion around] your enemies (Matt. 5: 44; Luke 6:27.)

For the vast majority of Christians since the time of Christ, who derive great comfort from the famous assertion,

For God so loved the world... (John 3:16),

there is a footnote theology at work right in that all-time favourite passage: *Except our enemies*. They may and must be mercilessly slaughtered. Such is one dominant legacy of Christendom persistent right to the end of the 20th century.

It is precisely in interaction with this Christian heritage that René Girard, longtime Andrew B. Hammond Professor of French Language, Literature, and Civilization at Stanford University, has developed a fascinating understanding of “violence and the sacred”<sup>12</sup>. Entire international conferences in the social sciences have been convened around his writings, with a wide reputation accruing to him as a “seminal thinker”. An annual conference inspired by him called “Colloquium on Violence and Religion” (COV&R) attracts an international gathering of mainly scholars, with some activists and activists/scholars attending.

Girard is

the originator of the idea that metaphysical desire is contagious (Hamerton- Kelly, 1994, p. ix).

Girard has significantly developed what after all is a longstanding biblical understanding that misplaced desire (other than in one’s Creator and in the well-being of one’s neighbour/enemy) is addictive and hence destructive of all that makes one human.

Girard’s thought has two significant moments:

*mimetic desire* and the *surrogate victim*. The former causes the problem that the latter solves. The problem is the problem of violence caused by the fact that desire imitates desire and thus inevitably enters into a rivalry of desires, and the latter solves it by causing rival desires to coalesce in a unanimity of violence against a single victim who is surrogate for potential victims. Thus the victim gives the group the unanimity necessary for culture and generates the category of the sacred with its sub-categories of prohibition, ritual, and myth. ‘Mimetic’ used before desire indicates the imitative and inevitably rivalrous nature of desire, and ‘metaphysical’ indicates that the competition is not simply for some external good but for personal significance understood as substantial being, which we all assume the other to possess. Metaphysical desire is an instance of the Augustinian confession, ‘Thou has made us for Thyself and our hearts are restless until they rest in Thee.’ It is the nemesis of deviated transcendence. When human desire deviates from its true divine end a metaphysical void opens in us. That void drives us to seek fulfillment from our fellow human beings, whom we mistakenly believe to possess the ontological fullness that we lack. Thus we fall into a war of desire for empty prestige and hollow pre-eminence (Hamerton-Kelly (1994), pp. ix & x).

Another interpreter explains further:

The frustrations which evolve through an intensification of mimetic desire and rivalry prompt violent impulses. According to Girard, there are strong inhibitions which limit the outbreak of unrestrained mimetic violence to which groups are prone. These inhibitions are based on the recognition that such reciprocal violence could lead to mutual destruction. A **sacrificial mechanism** by which a **scapegoat** is ritually killed helps to displace the violence within a group at risk. If the ritual becomes regularized, a surrogate scapegoat enters the picture. For Girard, the mimetic desire/scapegoat dynamic is generative of myth, culture and religion. What increases the subtlety of Girardian analysis is the phenomenon of hiddenness. People are never aware of the fact that they are scapegoating (Redekop, 1994).

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<sup>12</sup> Though he actually developed his theories before turning to Judeo-Christian Scriptures.

Like any theory, the jargon itself takes some getting used to. In simplest terms, Girard is explicating a rather classic doctrine of “original sin” from an anthropological rather than a theological vantage point.

Mennonite theologian John Howard Yoder first encouraged those of us in Mennonite circles working at bringing in a new vision of justice, usually called “restorative”<sup>13</sup>, to learn from the work of and inspired by René Girard. Another theologian, and also criminal justice activist, Vern Redekop, did precisely that. He produced a much appreciated essay for our “Occasional Papers” series: *Scapegoats, the Bible, and Criminal Justice: Interacting with René Girard* (1993<sup>14</sup>). He received the blessing of Girard on his completed paper, though Girard had not turned his attention in that direction. Vern is now completing his Ph.D. on the thought of Girard, and is a regular participant at the annual COV&R gatherings.

In the Introduction to his essay, Vern asks:

Is it possible that what we call a criminal justice system is really a scapegoat mechanism (p. 1)?

Before giving an answer, he observes that

The process of scapegoating must have tremendous power if it is to purge the violence from society. It demands the legitimacy that religion can offer. It demands more than legitimacy, however. It demands the power of the Sacred.

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 (p. 16).

After a section on “SCAPEGOAT THEORY AND THE BIBLE” Redekop considers SCAPEGOATING AND CRIMINAL JUSTICE (p. 27).

He agrees with Girard that society needs an outlet for its violence, and states that the criminal justice system is inherently violent, first in that it forcibly removes a person’s freedom, second in its primary resort to imprisonment, by definition a violent and dehumanizing practice<sup>15</sup>.

Redekop finally bluntly says

It is possible to think of the criminal justice system as one gigantic scapegoat mechanism for society (p. 33).

He continues:

When one considers how much crime is unreported, how few crimes are brought to trial and among those how few result in conviction and prison sentence it turns out that we imprison in the order of 3% of criminals. (See the report of the Canadian Sentencing Commission for a detailed breakdown.) This tiny percentage of offenders who are severely punished can be thought of as a collective scapegoat for society. Those individual criminals who warrant sensational news coverage, can function as scapegoats themselves. In order to be satisfying, the sentences must be

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<sup>13</sup> But “transformative”, “relational”, “healing”, “satisfying” and “reintegrative” have also been used. Ruth Morris argues convincingly that only in the theological sphere does “restorative” make sense – restoration to the creational ideal of loving relationships. Otherwise, in our reality where often the victim did not have a relationship with the offender, or where the relationship was dysfunctional, where the community often had excluded the offender, and the offender had related to an ostracized subculture, “restorative” is absurd or simply unthinkable. What is needed is something “transformative” according to Morris, by which old ways are entirely transcended in favour of healing new relationships. See her article, “Not Enough!” (1995), and her book *Penal Abolition* (1995), pp. 70ff.

<sup>14</sup> All page numberings in the next section are from this publication. The reader may find the entire series [here](#) (near bottom of page). The series will also be reproduced in another *Volume* of the *Justice That Transforms* series.

<sup>15</sup> See Griffith (1993) for a theological dismantling of the legitimacy of prison.

long enough. For some crimes, there is a call for the death penalty (pp. 33 & 4).

A recent Canadian publication (Gabor, 1994) is one sustained illustration of the above. Its title, *'Everybody Does It'* is a double entendre, referring both to how regularly the self-styled "law-abiding" exculpate themselves in their own illegalities yet are merciless towards the convicted criminal, and on how grand a scale the so-thought "law-abiding" are in fact not. Rather, over 90% of the "law-abiding" are repeat opportunistic offenders. (As high or even higher a percentage proves to be true of law enforcement officers.) The book is one long secular exposition of the Romans 3:10 assertion:

There is no one righteous, not even one.

Gabor is after all treating of only the kind of crime that is codified in various state criminal codes. If by crime we mean however "fundamental disrespect towards others whereby harm is done intentionally or without regard to/for another, eventuating in broken relationships", we are, to use the words of the *Anglican Prayer Book* (reflecting a central biblical insight), "all miserable offenders". This is especially so when we consider various circles of participation in wrongdoing we all belong to. "If you are not part of the solution, you are part of the problem." is the secular proverbial counterpart to "There is no one righteous, not even one." We are all repeatedly part of the problem, to a greater or lesser extent!

When living in Berlin for two years, on occasion I asked older Berliners if "they knew" about the Holocaust during the War. They invariably answered "No" with their voices, but their eyes said "Yes". I do not like to admit that buying inexpensive coffee at this end of the market continuum sometimes means people tortured and murdered at the other end. But it does, ineluctably. My buying cheap gas at the local pump has in part to do with thousands of Iraqis killed and malnourished during and since the Gulf War. The examples of such collusion are legion. John Donne's famous "No man is an island" has multifaceted applications, one of which is we are all by degrees accessories to some kinds of violent crime near or far away.

I admitted at the outset to the almost inherent self-righteousness of the Christian believer. But I will now apply the critique to the nonreligious too. Gabor universalizes this human proclivity by saying in his Preface:

I wanted to take issue with the hypocrisy displayed by many citizens who routinely condemn what they consider to be our leniency towards convicted criminals, while they justify their own illegalities (1994, pp. xiii & xiv).

From the content of the book, by "many" he means "most". In one of Jesus' encounters with the religious self-righteous (Luke 10:29) the text says:

But he wanted to justify himself...

This is the universal human condition. Christians ironically enough believe that in Christ that gift (justification) was offered all humanity, and therefore we can "hang loose" about it when it comes to ourselves. In fact, the strong impression is given in the Christian texts that we are to pass on this good gift to others, both as Good News about what God in Christ has done for us, but also the Good News about what we are *supposed* to do likewise to/for others<sup>16</sup>.

## David Milgaard

David Milgaard was convicted in 1969 of a rape and murder offence he consistently claimed he had

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<sup>16</sup> Stories told by Jesus involving the unforgiving servant (Matt. 18:23 - 35) and the disgruntled elder brother (Luke 15: 10 - 32) illustrate this point.

no knowledge of. During the last 10 of 23 years in prison for the offence his mother campaigned tirelessly for his release. The Canadian Department of Justice deliberated on new evidence for 2½ years before deciding not to pass his case on to the Supreme Court.

Fortunately, upon this refusal by the Department of Justice, the media finally began to rally around the Milgaard's. Two journalists published a book, unauthorized by the family, but pro-Milgaard, on the "failure of justice" in this case (Karp and Rosner, 1991)<sup>17</sup>. Under pressure of an increasing crescendo of media articles and electronic media interviews with Milgaard and others, his case was ultimately granted a Supreme Court hearing. The Supreme Court recommended releasing Milgaard, which occurred May, 1992 - with \$250 in his pocket. It deemed there was no longer adequate evidence to support his original conviction. It also recommended that the province of Saskatchewan, where he was initially tried and convicted, grant him a new trial. The province refused, stating it not to be in the best interests of the people of Saskatchewan.

Milgaard has remained in a legal limbo: technically neither guilty nor innocent, he has received neither official government apology for 23 years of time served for a wrongful conviction, nor any government compensation. At this point, he is awaiting government permission to proceed with DNA testing of the evidence, in order finally to clear his name, and hopefully to set in motion a public inquiry which would ultimately win him and his family much deserved exoneration and compensation.

### **Donald Marshall**

A similar case, that of Donald Marshall, a Micmac Indian from Nova Scotia, found Marshall to be innocent after 11 years of a life sentence served<sup>18</sup>. The Royal Commission that conducted the inquiry cost the Canadian taxpayers \$7 millions. It found racism and wrongdoing at every level of the provincial justice system. Its report was a stinging indictment of a justice system gone seriously and pervasively wrong.

### **Manitoba's Aboriginal Justice Inquiry**

The province of Manitoba, impelled by two notorious cases of neglected justice for its native people, conducted an Aboriginal Justice Inquiry. The two-volume report begins:

The justice system has failed Manitoba's Aboriginal people on a massive scale. It has been insensitive and inaccessible, and has arrested and imprisoned Aboriginal people in grossly disproportionate numbers. Aboriginal people who are arrested are more likely than non-Aboriginal people to be denied bail, spend more time in pre-trial detention and spend less time with their lawyers, and, if convicted, are more likely to be incarcerated.

It is not merely that the justice system has failed Aboriginal people; justice also has been denied to them. For more than a century the rights of Aboriginal people have been ignored and eroded. The result of this denial has been injustice of the most profound kind (Hamilton and Sinclair, 1991, p. 1).

James McCloskey, founder of Centurion Ministries in the U.S., estimates that as many as one in ten persons convicted of a serious and violent crime is entirely innocent of the offence (1991, p. 1<sup>19</sup>).

His work is totally dedicated to freeing the wrongfully convicted from prison. Freedom Press in Leesburg Virginia, and A.I.D.W.Y.C. (Association in Defence of the Wrongly Convicted) in Canada

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<sup>17</sup> A movie documentary was subsequently produced on his ordeal.

<sup>18</sup> The book, *Justice Denied* (1986) tells most of the story, except the Royal Commission was conducted after publication of the book. There is also a feature-length movie that dramatizes his story.

<sup>19</sup> Other quotations by him are from the same source.

do similar work. McCloskey explains convincingly how this can be the case in the article cited. He states:

An innocent person in prison, in my view, is about as rare as a pigeon in the park... Although no one has any real idea of what proportion it has reached, it is my perception that at least 10 percent of those convicted of serious and violent crimes are completely innocent (p. 1). He concludes: Untold numbers of innocents have tumbled into the dark pit of prison. Some of them have eventually gained their freedom, but a majority remain buried in prison, completely forsaken by the outside world (p. 10).

Says Redekop:

The criminal justice system is based on a mythology which legitimates and hides the scapegoating in that it is based on the viewpoint of the persecutors who within the mythology are the prosecutors. To express it metaphorically, crown prosecutors and district attorneys are the priests of a secular culture. They represent society as they call for the punishment and in some cases the death of those who have done something which legitimates the sacrifice of their well-being or lives. Again, allowing Girard to argue first-hand,

[W]e can expect from this myth only what we would expect from any account of a violent deed provided by its perpetrators. We can expect the victim to be seen as guilty and therefore to be mythically guilty. We can expect the violence of the group to be condoned and justified. This violence will be presented as a legitimate defense against a fearsome monster, as the just punishment of a guilty criminal [Girard, 1987, p. 79] (pp. 40 & 41).

It is of course tragic enough that this happens to those genuinely guilty of the crimes for which they are punished. It is scandalous that it happens to those innocent of the crimes for which they are being punished. That this might be the case in even 10% of all serious and violent crime convictions and sentencings underscores even more so the truth of the famous book title by Karl Menninger, *The Crime of Punishment* (1969). Over against the ultimate “scapegoating mechanism” of Western culture, the criminal justice system, one must work towards dismantling every vestige of its alienating dynamic, especially its hiddenness<sup>20</sup>. This calls for naming the system for what it really is: a

**criminal** (because it commits untold crimes against its clients) **(in)justice** (because it is far removed from any notion of *tsedeka* or restorative, or transformative, or healing justice), **complex** (because it is anything but a systematic pursuit of justice for all: victim, offender, wider community).<sup>21</sup>

Numerous books, many of which are doubtless cited or reviewed in this special issue of *The Justice*

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<sup>20</sup> In the book *Dead Man Walking* (1993) it is precisely the hiddenness of the actual killing process that Sister Helen Prejean wants to put into public view:

I am convinced that if executions were made public, the torture and violence would be unmasked, and we would be shamed into abolishing executions (p. 197).

The movie version of the book accomplishes precisely that. It is now up to the public to recognize and condemn this kind of scapegoating. The North American public still has some ways to go in feeling outrage at such inhumane scapegoating. It is heartening however to remember that images of destruction and desolation during the Gulf War were deliberately blacked out to American TV viewers. The government seemed to know what Prejean intimates.

<sup>21</sup> The classic, *Instead of Prisons* (Morris, 1976), offered clear advice around resistance to use of euphemistic language for the “complex”, which, since the end of the Cold War, has moved to rival the “military industrial complex” in its threat to all humanity and humanness. Nils Christie’s reissued study, *Crime Control as Industry* (1995) is disturbing testimonial to this threat, especially in the author’s decision to drop the question mark from the subtitle (*Towards Gulags Western Style*) between the first (1993) and second editions.

*Professional*, are now pointing another way<sup>22</sup>.

In his masterful book on violence, deeply indebted to the work of René Girard, Gil Bailie indicates that of the cultures of the world, “empathy for victims – as *victims* – is specifically Western and quintessentially biblical.” He continues:

The burr under the saddle of “Western” culture, the source of its moral uneasiness and social restlessness, is precisely this growing empathy for victims... (1995, p. 19)<sup>23</sup>.

A few pages later he says:

Today the victim occupies the moral high ground everywhere in the Western world. The cultural and historical force that caused this reversal is the gospel (p. 29).

Bailie explains that though it is never consistent, and though there is great scapegoating violence in the Bible itself seemingly condoned by God and various writers, nonetheless the inexorable sweep of Judeo-Christian Scripture is ultimately towards the total vindication of Jesus the Representative Victim, thereby giving the lie to the legitimacy ever again of drawing a circle of exclusion around anyone. In light of note 20 above, Bailie says:

The experience of being morally shaken by a public execution is the beginning of an anthropological and spiritual revolution for which the term “Christianity” was coined decades after the public execution of Jesus (p. 83).

In this regard, Girard says:

In the Hebrew Bible, there is clearly a dynamic that moves in the direction of the rehabilitation of the victims, but it is not a cut and dried thing. Rather, it is a process under way, a text in travail... a struggle that advances and retreats. I see the Gospels as the climactic achievement of the trend, and therefore as **the essential text in the cultural upheaval of the modern world** (1987, pp. 140 - 141, emphasis added).”

Girard’s theory of scapegoating together with the challenge to say a definitive NO! to all forms and mechanisms of scapegoating, from our personal all the way to our government practices, are at the heart of a critique of the current “criminal (in)justice complex”. It is a call to an inclusiveness that is nothing short of breathtaking in scope. It is “kingdom come”, the “impossible dream”, “Paradise regained” – whatever metaphor. It is within our reach, yet continually elusive.

Such an alternative system could be designed with a radically different goal: healing, reintegration, reconciliation, peacemaking. But if not for all, it would fail. And this means a “paradigm shift” as Howard Zehr calls it (1990) on the part of an entire culture to a vision of “restorative justice”.

A system based on restorative justice would be similar to the present one, with one change in procedure, one significant addition, and one major change. Precedents for all these are already in existence.

The change in procedure... is... prosecution would proceed only when adequate reparation was not forthcoming from the offender.

The addition would be local mediation services...

The major change would be that the primary purpose of the courts would be restoration of the community and the individual victim, where there is one, rather than punishment of the offender (Wright, 1991, p. 117).

So argues one writer in the field. Seen this way, the transition seems within reach.

Ruth Morris however, demurs:

The description suggests an approach of attrition...

Attrition has not worked as a model for abolition, and I fear it will not work to install restorative justice....

The cravings of the press, the judiciary, and the general public to appease the social pain of conflict

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<sup>22</sup> From the Judeo-Christian perspective, these include: Meurer (1972); Klassen (1977); McHugh (1978); Jackson (1981); Van Ness (1986); MacCallum-Paterson (1988); Northey (1989) & (1992); Lind (1990); Mackey (1990); Moule (1990); Zehr (1990); Boers (1992).

<sup>23</sup> All subsequent quotations are from the same publication.

and wounding by destructive vengeance overshadows (*sic*) all appeals for restraint. It (*sic*) also overpowers legislative gimmicks to promote prison reduction. We have to change the basic paradigm..... (1995, pp. 286, 287 & 288).

Instead, she calls for a radical “penal abolition”<sup>24</sup> “which will lead to “transformative justice” (her favoured term) for everyone.

Once seen as a scapegoating mechanism in society, it becomes clear that there must be a total dismantling of the punitive violence of the criminal justice system whatever the alternative. Else the system remains part of the problem of recycling violence like leaven throughout society. For centuries in the West the liquids used (and called for) to douse the flames of crime have proved to be pyrogenic instead, often leading to holocaust. Another fire depressant is needed. It must be radically restorative.

## Forgiveness

Forgiveness is an “F” word as victims repeatedly have told us in our mediation work. Dare to mention it to victims in the immediate throes of crime victimization, and one will rightly and roundly be banished from aiding in their recovery process.

Likewise, the word has been freighted with religious overtones, in the West with Christian insinuation, for so many centuries, that it has not had, until recently, much attention from within the wider secular, especially therapeutic, community. That is beginning now to change. One harbinger was an essay by R.P Fitzgibbons (1986). For this clinician, some trauma was so overwhelming for his clients that traditional counselling to rage against it left such a profound void, that he finally began to encourage the *technique* of forgiveness.

It may take years of intellectual assent to the need to forgive, but for many of his clients, the penny would ultimately drop when once they actually “did” it. Suddenly, they walked free! An essay by John Gehm (1992) pulls together some of the appropriation of this concept as a therapeutic technique. He observes:

Yet forgiveness lies at the very heart and center of processes for overcoming the deleterious effects of crime and other social inequity. There is increasing evidence to suggest that victim-offender reconciliation programs may have the potential for far broader applications than was previously thought possible or desirable (p. 547).

Noting that for many “to speak of forgiveness *in politics* is to risk an oxymoron.”, theologian Donald Shriver devotes an entire book to just that endeavour (1995; citation from p. 6<sup>25</sup>). Observing as well that the concept is complex and multidimensional, and after carefully giving content to each of his terms used, the author suggests that

Forgiveness in political context, then, is an act that joins moral truth, forbearance, empathy, and commitment to repair a fractured human relation (p. 9).” Not a process whose watchword is “forgive and forget”, “Quite the reverse:” he remonstrates, “ ‘Remember and forgive’ would be a more accurate slogan (p. 7). So defined, the author continues, political forgiveness links realism to hope. It aims at delivering the human future from repetitions of the atrocities of the past. Given the scale of politically engineered atrocity in the twentieth century, nothing could be more practical or more urgent gift to our neighbors of the twenty-first (p. 9).

There is a pragmatic undergirding of the call to forgive in politics throughout the entire book. The 20th century has sacrificed more of its inhabitants in warfare than all previous centuries of recorded history combined: 107 million victims! Into the 21st century, we *had better* learn to forgive!

But the Christian imperative for forgiveness is irreducibly *theological*. The biblical view is that we are created in God’s image as persons-in-community, as God is a Trinitarian community of dynamic

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<sup>24</sup> Title of her most recent book (1995).

<sup>25</sup> Subsequent citations from the same publication.

love between Father, Son, and Spirit from before creation. When we are called to “love our neighbour as ourselves”, it means,

You shall love your neighbour *as being your own self*.” Your neighbour is your true self. You have no self in yourself (Kisly, 1987, p. 52).

And Jesus pushed the bounds of who is the neighbour to the limit to include the enemy<sup>26</sup>. Father Hopko in the interview just quoted from continues:

But if that is my reality, and my only real self is the other, and my own identity and fulfillment emerges (*sic*) only in the act of loving the other, that gives substance to the idea that we are potentially God-like beings. Now, if you add to that that we are all to some degree faulty, weak, and so on, that act of love will always be an act of forgiveness... So the act of forgiveness is the very act by which our humanity is constituted. Deny that, and we kill ourselves. It’s a metaphysical suicide (*ibid*, p. 52).

It is for no small reason that historian Alistair Kee bemoans the “great reversal” in church history when Christians abandoned the “life craft”<sup>27</sup> of forgiveness toward neighbour and enemy alike and chose an ethic of “power over”<sup>28</sup> instead (1982). The entire history of Western Christendom and its ultimate secularizations might have been vastly different!

Gregory Jones’ *Embodying Forgiveness* (1995<sup>29</sup>) is the most thorough theological treatment of forgiveness from a broad ecumenical base this writer knows. Like Hopko, he grounds his discussion in the triune nature of God, noting

that the doctrine of the Trinity is not simply a later addition to Christian confession that emerges only in the encounter with Greek and Roman philosophical ideas. It is rather the means by which, from the very beginning of their worship in the wake of Jesus’ life, death, and resurrection, Christians have characterized the God who forgives and the nature of that forgiveness (p. 112).

Later he continues:

For at the heart of the Christian doctrine of God is the conviction that God lives as the loving friendships, the self-giving relationships, of Father, Son, and Holy Spirit. Further, that giving of self becomes manifest in the outpouring in Creation... God creates not by conquest but by speech – as John 1 puts it, by God’s *Word*.

But that *Word* is none other than the One who is, as a result of human sin and evil, nailed to the cross. In the slaying and raising of Jesus of Nazareth, God overcomes our propensity for violence by binding it up into God’s own trinitarian life. That is to say, in the face of human sin and evil God’s love moves toward reconciliation by means of costly forgiveness (pp. 112 & 113).

What the Jesus story suggests is, there is no ultimate, sustainable revolution or radicalness without self-transcendence. In the name of the revolution alone, the tactics of the enemy – violence – are invariably resorted to. For all revolutions in history have ended up killing “the enemy”. The Christian revolution calls instead for “death of self”. What the Jesus story offers is the capacity for self-transcendence which ironically gives us the only true “self” back we have, one unavoidably caught up in the well-being of the neighbour. Jesus’ test case for the authenticity of “getting it” about this “transcendence thing” was how we treated the enemy. In fact, the entire New Testament posits love of enemy as litmus test for love of neighbour as litmus test for love of God<sup>30</sup>. Combine this with the consistent call for “death to self” in a lifelong act of self-emptying and self-giving, and the essence of the life craft of forgiveness becomes discernible. This of course is potentially pathological

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<sup>26</sup> Matt. 5 - 7; Luke 6

<sup>27</sup> Gregory Jones’ term (1995).

<sup>28</sup> Jesus’ repeated call and example were to a non-domineering form of leadership. The texts are: Matt. 20:25ff; Mark 10:42ff; Luke 22:25ff; John 13:3ff.

<sup>29</sup> All subsequent quotations are from this publication.

<sup>30</sup> The classic text is I John 4:16 - 21.

if there is not a reference point for self-transcendence. Jesus offers himself as that lode-star. There is therefore finally an irreducible element of belief and commitment to Jesus to be found in the Christian understanding of forgiveness. Notwithstanding, while the craft of forgiveness is embodied most specifically in the friendships and practices of Christian communities, it also finds analogues in the world of God's good creation and specifically in many other (religious and nonreligious) traditions (p. 210).

I would have worded it, while the craft of forgiveness *should be* embodied most specifically in the friendships and practices of Christian communities...

For I find I can always go many times better in response to the church's detractors, my interlocutors, for from *within* the life of the church past and present I suggest *that there have been no greater atrocities committed by anyone anytime anywhere than those committed in the name of Jesus in the past two thousand years!* Equalled by others, but not surpassed. Jones' book nonetheless is an immensely helpful and hopeful treatise on the central life craft of the Christian, and of all humanity: forgiveness. Likewise, Shriver's book (1995) masterfully documents three great events of American history where "forgiveness in politics" is emerging to offer hope and new beginnings.

## Wilma Derksen

Wilma Derksen's family was devastated by the disappearance of her daughter in Winnipeg, late November, 1984. Two months later she was found bound hand and foot frozen to death in an abandoned shack. She ultimately wrote of her experiences in *Have You Seen Candace?* The subtitle is: *A true story of faith and forgiveness* (1991). At one point she tells of having tea with a close friend not long after the funeral service. Her friend asked her in the secure intimacy of that encounter,

What would be justice for you?

She found that her mind's camera began to imagine no less than ten child murderers lined up for execution. And she would pull the trigger, one by one. As she did, and watched each drop lifeless to the ground with their hoods falling loose, she looked up and suddenly saw ten families like hers weeping unbearably from their loss.

"But that doesn't satisfy", she heard herself saying, "I think our choice to forgive is the right one. (Derksen, 1991, pp. 224ff)." She adds: "By forgiving we can transcend the hurt and choose to be loving again (p. 227).

That conversation and the experience of meeting another murdered daughter's father who was wallowing in self-destructive revenge convinced her of the rightness of this other way: forgiveness. But she is quick to point out that it too easily is the "F" word, and has written even about the fifteen elements of healing needed for a victim in conjunction with forgiveness, which she calls "letting go" (1994, pp. 9 & 10). She has also presented on this theme to numerous groups across Canada, and was co-founder of "Family Survivors of Homicide" a Winnipeg-based victims self-help group. In her and her family's case, since the murderer was never found, she has had to practice quite literally a policy of forgiving "seventy times seven"<sup>31</sup>.

She is now poised to engage nationally through our agency the issue of victims' concerns from the perspective of forgiveness, reconciliation, and healing – "restorative justice". Her intention is to offer this in the face of victims' voices calling for greater punishments, including capital punishment, in response to the terrible trauma they have experienced. She has internalized the life craft of forgiveness, and is working with other victims to help them pursue this way of freedom.

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<sup>31</sup> Jesus' words in Matt. 18:22.

Forgiveness has a crucial role within the criminal justice system. Just as twenty-two years ago “reconciliation” was virtually unheard of within the Canadian (and much of Western) justice system, but is emerging as central within the “restorative justice” paradigm, so, as Gehm was quoted earlier *vis à vis* forgiveness,

There is increasing evidence to suggest that victim-offender reconciliation programs may have the potential for far broader applications than was previously thought possible or desirable (Gehm, p. 547).

## Conclusion

My route into work in this field was through the “back door” of theological studies. I have found it interesting during the past 22 years of engagement often to discover nonreligious people genuinely perplexed about what could possibly be a “religious motivation” for work in this area given the record of the church. I appreciate that perplexity! I also understand the sometimes high levels of suspicion with which a Christian-based involvement has been met.

There is nonetheless a great irony here. Glen Tinder in an *Atlantic Monthly* article (1989) presents a challenging case for the need of transcendence in answer to his question, the article’s title, “Can We Be Good Without God?” The work of René Girard and others is also pointer to the claim that finally, one cannot sustain love of neighbour without learning to love God.

Consider:

The Jesus of Matthew’s Gospel [22:36ff] did not say that the greatest commandment was to *believe* in God and love humanity. He did not say that we should be nice to one another because that’s the way God would like us to behave. He said the first and most essential thing is to *love God* with a paramount love. It is the most hackneyed notion in the world, but once or twice in a lifetime its dulling familiarity vanishes, and one feels for a moment the unfathomable significance and centrality of Jesus’ suggestion for breaking the grip of sin and death: to *love God*. Partly due to the humanists’ romantic idea of basic human benevolence and partly to the rationalistic “where-there’s-a-will-there’s-a-way” spirit of the Enlightenment, the modern world came to believe that it could fulfill the requirements of the second commandment [love humanity] without having to bother with the first. We moderns came to believe, in effect, that, by itself, the second commandment was a civilizing force sufficient to the task at hand. The creaking and groaning, indeed, the shouting and shooting, that we now hear all around us is (*sic*) coming from the collapse of that assumption (Bailie, p. 272).

The sentiment is perhaps overstated, since the “creaking and groaning, the shouting and shooting” have been with us since time immemorial. And those claiming to obey both commands for almost two millennia have had no small share in the atrocities. Still, 107 millions slaughtered in this most secular of all centuries does give one pause...

I began the essay with allusion to Claire Culhane, who, though self-consciously without a religious base, nonetheless exemplified the very spirit of a Judeo-Christian approach to justice. As noted above, she once told me that the difference between her and another noted Canadian criminal justice activist, Ruth Morris, was Ruth’s (Quaker) faith in God. Claire was a more consistent supporter of our work in restorative justice than most church people I’ve ever known – many of whom in fact resist the more radical aspects of this work... When I asked Claire once, “What keeps you going?”, thinking there may be some spirituality at heart, she responded in Marxist fashion that history would one day vindicate her. I conclude therefore that hers was a this-worldly eschatological transcendence. And it worked! – as anyone who knew her life or attended her Memorial Service, May 11, 1996, must admit.

That the Judeo-Christian tradition has much to offer in the cultural upheaval of the modern world. (Girard, 1987, p. 141), specifically in humanizing the criminal justice field, I hope I have shown in this essay.

And there I leave the matter.

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