

## Transformative Justice Vision and Spirituality

by Wayne Northey

### *Introduction*

A character in a forthcoming novel set during the Vietnam War era expostulates:

“You want to know why Europe so quickly secularized and is so incredibly resistant to the Gospel today? You North Americans are so hung up about the Enlightenment and its disparagement of the ‘foolishness’ of the Gospel. But you fail to understand that Western Europe simply became utterly sick of the endless and horrendous bloodshed blessed or instigated by the Church: the Crusades; the Inquisition; the (what’s that word in English?) *pogroms* against Jews; the Holy Wars; the witch-hunts; the burning of thousands of heretics by the Catholics; the drowning of similar thousands of Anabaptists by Protestants; the incredibly retributive penal justice system modelled after church canon law, and universal support of the death penalty; the church’s blessing both sides of every war in Europe since Constantine; and on and on and on.

“There has been arguably no more bloody institution in Western history than the church since the fourth century. If this is what Paul meant by ‘Christ, the power of God’, then frankly, the revolt of atheism is pure religion by contrast! Ironically, however, that very revolt is instigated in the first place by biblical revelation! (Jesus first elicited the Western atheistic philosophical tradition with his cry from the cross, ‘My God, my God, why hast thou forsaken me?’ Jürgen Moltmann, and I’ve heard him say this, observes that this indeed is the end of all religion, and therefore the atheists are right, or the beginning of a whole new way of understanding ‘the executed God’.)

“If Christ is the foolishness of God in answer to the Enlightenment (but really God’s wisdom), so is he the weakness of God in answer to violence and war (but really his is the way of self-giving, sacrificial love which is God’s nonviolent, revolutionary power).

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“The Enlightenment I argue was in part an understandable reactionary celebration of the brilliance and goodness of man over against a church perceived to exist to glorify violence through its belief in ‘god’ and a doctrine of ‘original sin’ that leads directly to a hell of eternal conscious torment. The reason the Enlightenment took such root in the first place was the valid repulsion towards the ‘god’ of the churches: a ‘god’ who blessed war, bloodshed and everlasting punishment in Jesus’ name on a massive scale.”

“Violence is the ethos of our times”, begins one writer’s robust assessment of contemporary Western culture (Wink, 1992, p. 13). By “violence” is meant *the deliberate infliction of harm upon another as an end in itself*. This is of course also what “penal”

(from the Latin *poena* – pain) means: *the purposeful infliction of pain upon another as an end in itself*: ‘pain delivery like milk delivery’, as Nils Christie aptly catches its quintessence and banality<sup>1</sup>. Violence in Western culture is bar none the dominant spirituality of our age. It is and has been the driving spirituality of Western penal law as well.

### *Centrality of Western Christian Spirituality for Criminal Justice*

The defining religious ethos of Western spirituality historically has been Christianity. Christianity has also been the reigning ideology in the West until into the nineteenth century. While it is salutary to discuss other world spiritualities with reference to Western penal law, no other religion or spirituality has remotely impacted the formation of the Western legal tradition like Christianity. Harold Berman’s magisterial *Law and Revolution* (1983/1997) describes this interaction of law and Christianity as centrally formative to the Western legal system.

*The Spiritual Roots of Restorative Justice* (Hadley, 2001) points towards a vision of penal abolition and transformative justice. It presents a religious pluralistic vision and is highly recommended! But given the unmatched dominance of Christianity in influencing the development of the Western penal law tradition, I shall concentrate my attention on *Christian* spirituality and penal abolition<sup>2</sup>.

While one cannot wish away the past, can it be too much to hope that the twenty-first century for Christian spirituality world-wide will be marked by a profound renewed impulse towards peacemaking? Such a world-transforming spirituality has never been more needed!<sup>3</sup> It is the contention of this paper that the Christian story offers a dramatically alternative narrative to that of resort to violence, seen unfortunately so predominantly in Christianity’s long history. The story the Christian faith tells is eternal wellspring for the spirituality of nonviolence and penal abolition, however massively unfaithful Christian adherents have been to the plot-line down through the ages<sup>4</sup>.

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<sup>1</sup> See his 1982 publication.

<sup>2</sup> René Girard, whom I will discuss below, also indicates that “Christianity” in the academy is the “last politically correct scapegoat (Hamerton-Kelly, 1994, p. xi).” My teen-aged son once 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, given its long Western cultural hegemony. Further, no attitude is so disliked ultimately as self-righteousness (often in religious guise). Ironically, however, this is an attitude more strongly critiqued by Jesus than any other world religion founder - perhaps with due premonition! Alistair Kee’s historical study, *Constantine versus Christ* (1982) addresses the first concern, the Gospel of Matthew, Chapter 23, illustrates the second.

<sup>3</sup> The early church’s watchword, almost universally, was: “*Ecclesia abhorret a sanguine.*” – The Church abhors the shedding of blood. This was applied to abortion at one end, war at the other, and all else in between. Though such comes as a complete surprise to most Christians past and present, the teaching was first promulgated and exemplified by Christianity’s Founder.

<sup>4</sup> “Stanley Hauerwas has suggested that the only thing that makes the Christian church different from any other group in society is that the church is the only community that gathers around the true story. It is not the piety, or the sincerity, or the morality of the church that distinguishes us (Christians have no monopoly on

## *Some Western Church History*

In March, 1773, in England, an eighteen-year-old youth, John Wilkes, was sentenced to death for a break and entry into a house and later a robbery of a watch and money from a man on the public highway. He appealed to Rev. Joseph Fletcher, an Anglican divine, for help in having the sentence commuted. The youth's parents had both died earlier, and Wilkes was in many ways pitiable, a fact fully known to the Anglican priest. Rev. Fletcher was universally considered an 18th-century St. Francis, "the holiest man this side of eternity", by contemporary John Wesley's account. In particular he was renowned for his commitment to caring for the poor. Nonetheless, he adamantly refused to intervene on Wilkes' behalf. After the youth's execution, Fletcher published a letter he had written Wilkes, which had urged him to "confess your crimes, and beg the Son of God, the Lord Jesus Christ, to intercede for you, [for] it is not too late to get your soul reprieved." He continued by promising that God Almighty "will deliver you out of the hands of the *hellish* executioner" and "will help you to die the death of the penitent (quoted in Gorringer, 1996, p. 3)." According to Fletcher, Wilkes died a convert, a fact gloriously published by him after the youth's execution.

Both Charles and John Wesley, famed founders of the Methodist church, were deeply committed to caring for the poor, including responsiveness to Jesus' powerful words of solidarity with the imprisoned: "I was in prison and you came to visit me." (Matt 25:36)" Nonetheless, we read this account by Charles Wesley of his visit to Newgate prison, July, 1738, on the morning he accompanied nine prisoners to the gallows: "They were all cheerful, full of comfort, peace and triumph, assuredly persuaded that Christ had died for them and waited to receive them into paradise.... I never saw such calm triumph, such incredible indifference to dying." He returned home and wrote: "Full of peace and confidence in our friends' happiness. That hour under the gallows was the most blessed hour of my life (Gorringer, 1996, p. 4)."<sup>5</sup>

The Wesley's, Father John Fletcher, and their followers, were genuinely concerned for the poor. One Christian historian therefore plaintively asks: "What was it, then, which prevented them from seeing what the editors of the *Spectator* so clearly perceived [- 'that law grinds the poor' and 'rich men make the law']? How was it that they could see people like Wilkes, whose hopeless background they perfectly understood, go to the gallows for offences which were trivial and which involved no violence against the person, without

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virtue). It is the story we treasure, the story from which we derive our identity, our vision, and our values. And for us to do that would be a horrible mistake, if it were not a true story, indeed *the* true story, which exposes the lies, deceptions, and half-truths upon which human beings and human societies so often stake their lot (Marshall, 2000, p. 13.)"

<sup>5</sup> James Megivern (1997) in his massive historical-theological study of the death penalty describes this kind of sentiment as a centuries-long "gallows pietism" that argues a "celestial-security", atonement or expiation, undergirding of capital punishment. He says: "When it worked, it was obvious to all that the gallows was a special work of God, a providential occasion where proper dispositions for a good Christian death were ideally enacted in a grand public liturgy from which all could learn important lessons in both living and dying as good Christians (p. 162)."

exerting themselves to have the sentence commuted?... How is it that the question whether the law might be wrong, or even wicked, does not arise for these good Christian people? How could they come away from scenes of judicial murder feeling that this was ‘the most blessed day of their lives?’ (Gorringe, 1996, p. 5)”

One might similarly ask, with regard to contemporary Western law: How is it that the question whether the law might be wrong, or even wicked, does not arise for people committed to Christian spirituality? How could harsh sentences to penal institutions and the death penalty be embraced as quintessentially Christian by followers of the One who said: “[God] has sent me to proclaim freedom for the prisoners... (Luke 4:18)”, and “I desire mercy, not sacrifice (Matt. 12:7)”; and who himself was executed by the best legal system of the day (Roman), and by guardians of arguably the high point of then contemporary religious spirituality (Judaism)?

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 unbridled state power*. Christian spirituality initially had a profound *political subversion* dynamic at its very core. It also represented an unprecedented anthropological thrust that broke with dominant contemporary cultural scapegoating patterns. In honouring and worshipping an executed criminal, early Christians became irksome dissidents to the dominant mythology of culturally and state-sanctioned scapegoating violence.

René Girard, historian, literary scholar, and anthropologist, about whom we talked past week, has for over forty years developed this understanding of Christianity brilliantly, and has studied scapegoating violence across a sweeping interdisciplinary landscape. In turn, his publications have inspired an enormous body of published research that similarly discerns a *scapegoat mechanism* in most human cultures throughout history, contemporary Western no less<sup>6</sup>.

As a large body of scholarship demonstrates, what “happened” to Jesus’ and New Testament teaching was the legalization and embrace of Christian worship and Church by Roman Emperor Constantine in the early fourth century<sup>7</sup>. One writer dubs it a “Judas kiss”.

The same historian comments on the Constantinian era: “But there is one conquest made by Constantine, the effect of which still continues to the present day, his most surprising yet least acknowledged... He conquered the Christian church. The conquest was complete, extending over doctrine, liturgy, art and architecture, comity, ethos and ethics. And this is the greatest irony, that Constantine achieved by kindness what his predecessors had not

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<sup>6</sup> See Williams (1996) for an extensive introduction to, bibliography on, Girard. See Bailie (1995) for a contemporary cultural application of scapegoating theory. See Williams (1991) and Alison (1993, 1996, 1997) for sustained theological presentations of scapegoating theory. Finally, see Girard (2001) for a complementary *anthropological* presentation of scapegoating theory with reference to the New Testament.

<sup>7</sup> See Miller and Gingerich (1992) for an extended discussion of this and related issues.

been able to achieve by force. Without a threat or a blow, and all unsuspecting, the Christians were led into captivity and their religion transformed into a new imperial cult.... But this achievement, unheralded then, unrecognized now, represents Constantine's greatest conquest, the one which has persisted largely unchallenged through the centuries in Europe and wherever European Christianity has spread (Kee, 1982, p. 154)." The writer adds that "the reign of Constantine is a fundamental turning-point in the history of Europe, and not only Europe. From that time the imperial ideology, with all its implications for the accumulation of wealth and the exercise of power over the weak, was given religious legitimation by the church (Kee, 1982, p. 168)." The *persecuted* Church too easily became the *persecuting* Church in its response to pagans, Jews, other outsiders, and eventually criminals.

This past century, a large body of biblical scholarship<sup>8</sup> upon rereading the founding texts has discovered the truth of Gandhi's statement: "The only people on earth who do not see Christ and his teachings as nonviolent are Christians (quoted in Wink, 1992, p. 216)." Gandhi also wrote: "The message of Jesus, as I understand it, is contained in the Sermon on the Mount.... Much of what passes as Christianity is a negation of the Sermon on the Mount (quoted in Stassen, 1992, p. 33)." This much at least may be stated unequivocally: 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)."

### *A Short History of Christian Violence*<sup>9</sup>

I will now give you a quick bird's eye view of some of the church's most violent moments. *I am purposely centering out the violent aspects of that history. That is not the whole story by any means!* Thankfully, there is also lots of good news throughout this sad tale. Hindsight is 20/20 as is said. It is always easy to critique other eras through lessons painfully learned from humanity's passing through that history. We should be very careful about throwing stones, we who live in incredibly violent times...

1. As Christianity expanded into the Roman Empire during its first three centuries it met with significant resistance from the governmental authorities, which often took the form of direct persecutions resulting in Christian martyrdoms. During this period, Christians were, generally speaking, the recipients of violence rather than the perpetrators of it. After Christianity became a tolerated and then an official religion, however, it became much more common for violent acts to be carried out by Christians. This change began in 311 AD, when Emperor Constantine first declared Christianity a legal religion.

2. Priscillian was a Spanish ascetic. His enemies in the Spanish church lobbied the Emperor Maximus, and succeeded in obtaining his condemnation for heresy. Priscillian

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<sup>8</sup> See "Notes" in both books cited this paragraph for examples.

<sup>9</sup> Much of this is based on Bellinger (2001). I am repeating this survey from another paper by the author: **Is Violence Master of Us All?: Christians and Peacemaking, South Langley Mennonite Brethren Church, April 22, 2001**

and one of his followers, the noblewoman Eucrotia, were beheaded in 384. This was the first case in which heretics had been formally tried, convicted, and executed through the cooperation of church and state, foreshadowing the extensive powers of the Medieval Inquisition (Megivern, 1997, pp. 30-31). The intractable problem of the Church's dealing with the religious heretic that began with this case, continued during all subsequent centuries. The Church's resort to massive violence and capital punishment in response to *religious* heretics, became model for all Western States to treat *social* heretics – criminals – in the same way. Had earlier Christian intuitions of mercy, love, and forgiveness been dominant, Western criminal justice history might have turned out dramatically differently!

3. In the year 390, the people of Thessalonica murdered the military commander of the city. The Christian Emperor Theodosius ordered a massacre of the city's inhabitants, which resulted in more than 7,000 deaths. Under pressure of excommunication, exerted by Ambrose, Theodosius publicly repented of his sin (Dowley, 1995, p. 151).

For centuries afterwards, the church generally shrank from endorsing violence as a means of achieving justice. But this all began to change in the 11<sup>th</sup> century, when Saint Anselm wrote his treatise on the atonement, during what is called by some the "Papal Revolution". It was so-called, because of the explicit move by the Church to be the ultimate power in Europe. More on this follows.

4. The Crusades were a series of military expeditions organized by Western European Christians, during the 12<sup>th</sup> and 13<sup>th</sup> centuries, in an effort to recover the Holy Land from the Muslim "infidels." The first Crusade was very successful militarily, achieving several victories over the Turks as the Western armies advanced toward Jerusalem. On July 1, 1097, one of the main Muslim armies was defeated and almost completely decimated by the Crusaders. Two years later the Crusaders reached Jerusalem and captured it after a relatively brief siege. In the course of taking the city they massacred most of the inhabitants—men, women, and children. Jerusalem was described by observers as being "awash in a sea of blood." The Crusaders saw their actions as being an expression of God's righteous judgment on the Muslim "infidels" who deserved to die for their rejection of Christ and their "desecration" of the Holy City. Various subsequent Crusades were carried out during the next two centuries, most resulting in military failure or short-lived Latin kingdoms in the East. The net result of the Crusades was to further separate the Eastern and Western branches of Christianity from each other and to ensure the alienation of the Muslim world from Christianity — an alienation which to a large extent has continued up to the present day (Dowley, 1995, pp. 278 - 279).

Between 1209 and 1229 a Crusade was organized against the Albigensian heretics in southern France. Because a significant portion of the nobility of that region had sided with the Albigensians, the fighting was long and drawn-out, resulting in tremendous loss of life. The Roman Catholic bishop of the city of Bezier, when asked by the besieging soldiers how to tell the heretics from the orthodox, is reported to have said: "Kill them all, God will sort them out."

5. The Inquisition was the internal European institution which corresponded to the external Crusades. Its main function was to identify and punish the "infidels" within the

Western world who were perceived as a threat to society. The Inquisition was organized in the first half of the thirteenth century, largely in response to the Albigensian heresy in France, but its power was soon extended into many areas of Europe. Typically, the Inquisitors would enter a city and establish a court. They would summon all heretics to come forward and confess their heresy. Those who did so were treated with relative leniency. Those who were accused of heresy by others and found guilty were punished more severely, sometimes with death (at the hands of the civil authorities, not the Inquisitors themselves). In 1252 Pope Innocent IV officially approved the use of torture by the Inquisition to extract “the truth” from defendants. Justification for this procedure was found in the tradition of Roman slave law. Methods of torture included the rack and placing hot coals on the soles of the feet. At the close of the court proceedings, the sentences of those found guilty were announced publicly in a ceremony referred to as an *auto-da-fé*—an ‘act of faith’ (Dowley, 1995, pp. 321-324).”

In 1478 a relatively autonomous branch of the Inquisition was established with papal approval in Spain. It carried out a campaign against Jews and Muslims whose conversions to Christianity were thought to be insincere, against “witches,” and in later decades against those accused of Protestant leanings. Tomás de Torquemada, the notorious Grand Inquisitor of Spain, burned at the stake thousands of alleged heretics between 1487 and 1498. The Spanish Inquisition was not formally dissolved until 1834 (O’Malley, 1996).

Thomas Aquinas in the 13<sup>th</sup> century taught that the Church hoped for the conversion of the heretic, thus allowing him to respond to a first and second admonition. But if he remained unrepentant, then the Church ceased to hope for his conversion and looked to the salvation of others by excommunicating him and separating him from the Church, and furthermore delivered him to the secular tribunal to be exterminated thereby from the world by death. Aquinas quoted Jerome in support of this course of action: “Cut off the decayed flesh, expel the mangy sheep from the fold, lest the whole house, the whole dough, the whole body, the whole flock burn, perish, rot, die (Aquinas, 1988, p. 256).”

6. The magisterial reformers, Luther and Calvin, were not much different from the Roman Catholic leaders of the day with regard to their attitudes toward violence. Luther’s teachings had indirectly contributed to the Peasants’ Revolt in Germany in the 1520s. Luther called for suppression of the rebellious peasants in these well-known words: “Let everyone who can, smite, slay, and stab, secretly or openly, remembering that nothing can be more poisonous, hurtful, or devilish than a rebel. It is just as when one must kill a mad dog (Porter, 1974, p. 86).” In 1525, about 50,000 peasants were slaughtered by the German princes, urged on by Luther. The Consistory in Calvin’s Geneva burned at the stake the anti-Trinitarian heretic Michael Servetus in 1553. Calvin is reputed to have favored beheading as a more humane form of execution in this case. Nevertheless, he approved of the Consistory’s decision, and said that Servetus “cried like a Spaniard” as he was being burned.

7. The Catholics and the Protestants, especially the Reformed groups, were united in their fear and loathing of the Anabaptists, who had the audacity to proclaim that Christians

should not be in the business of killing. For teaching this and other “heresies” they were killed. The following record of the execution of Anabaptist leader Michael Sattler conveys the atmosphere of the time very effectively:

... The judges having returned to the room, the sentence was read. It was as follows: “In the case of the attorney of His Imperial Majesty vs. Michael Sattler, judgment is passed that Michael Sattler shall be delivered to the executioner, who shall lead him to the place of execution and cut out his tongue, then forge him fast to a wagon and thereon with red-hot tongs twice tear pieces from his body; and after he has been brought outside the gate, he shall be plied five times more in the same manner...”

After this had been done in the manner prescribed, he was burned to ashes as a heretic. His fellow brethren were executed with the sword, and the sisters drowned. His wife, also after being subjected to many entreaties, admonitions, and threats, under which she remained steadfast, was drowned a few days afterward (Hunston, 1957, pp. 141 - 144).

Scenes such as this were repeated many times during the sixteenth century, resulting in the deaths of thousands of Anabaptists, who were perceived as dangerous heretics attacking the very foundations of Western Christian culture.

8. Violence between Catholics and Protestants occurred sporadically during the sixteenth and early seventeenth centuries, erupting finally on a grand scale in the Thirty Years War from 1618-1648 (Dowley, 1995, p. 427). During this period the Catholic armies of the Holy Roman Empire entered into battles with the Protestant armies of Bohemia, Germany, Denmark, and Sweden. Success and defeat ebbed and flowed for both sides for many years. Most of the fighting took place in Germany, resulting in widespread devastation. Historians estimate that the overall population of Germany was reduced by fifteen to twenty percent.

9. The American Civil War took place between 1861 and 1865. Historians estimate that 620,000 persons died in the war (Litwack, 1996). On both sides there were Christian soldiers ministered to and encouraged by chaplains who claimed that God was on their side.

10. In the 20<sup>th</sup> century, about 110 millions were slaughtered in two Great World Wars, and hundreds of lesser conflicts. Christian chaplains were found in all countries with Christian origins fully supportive of their nation’s war efforts. When for instance President Truman watched the detonation in the Nevada desert of the world’s first nuclear bomb, he declared it was the greatest event in the history of the human race! Truman was a Baptist Sunday School teacher who also believed in the Resurrection... Shortly after the first test explosion, two atomic bombs were dropped on Hiroshima and Nagasaki, Japan, under Truman’s authority, and with subsequent full blessing of American Protestant, Evangelical, and Catholic churches, instantly killing about 120,000 civilian men, women, and children in those cities. A few months earlier, with similar support by Allied Christians the world over, 100,000 civilian men, women, and children had been slaughtered in one night of an incendiary bombing raid on Tokyo, Japan.



Father George Zabelka was the Catholic chaplain with the US Army air force who blessed the men who dropped the bombs on Hiroshima and Nagasaki in 1945. He said this in an interview: “The mainline Christian churches still teach something that Christ never taught or even hinted at, namely the just war theory, a theory that to me has been completely discredited theologically, historically, and psychologically.

“So as I see it, until the various churches within Christianity repent and begin to proclaim by word and deed what Jesus proclaimed in relation to violence and enemies, there is no hope for anything other than ever-escalating violence and destruction.”

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 church stands overwhelmingly guilty of massive injustice, mercilessness, and faithlessness on the issue of violence.

*More Church History: The Atonement and Western Penal Law*<sup>10</sup>

One more historical note needs to be added: how the Constantinian shift in Christian spirituality, from an initial profound disavowal of state-sanctioned scapegoating violence, to an embrace of the very state violence that killed its Founder, initiated also the devastatingly punitive and retributive Western penal law system that has been in place for almost a millennium.

From a biblical/Christian concept of justice where the victim’s voice is the primary voice and where a dynamic attempt at reconciliation, restoration, transformation and shalom between offender, victim and community is centre-stage, there was a progressive move to a concept of justice where the emerging State is central and where the victim’s voice is more and more silenced<sup>11</sup>. The victim is displaced by the King or Emperor responsible for ‘keeping the peace’ within the kingdom.

One author explains: “... ‘The [novel eleventh century] Gregorian concept of the Church almost demanded the invention of the concept of the State (Berman, 1983/1997, p. 404).’ ” And “as the [eleventh century] Papal Revolution gave birth to the modern Western State, so it gave birth also to modern Western legal systems, the first of which was the modern system of [Church] canon law (Berman, 1983/1997, p. 115).”

There was also in the eleventh century the emergence of a theology of satisfaction under

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<sup>10</sup> Throughout this section, I am drawing fairly extensively upon Allard and Wayne Northey (2001).

<sup>11</sup> This process is well described in Van Ness and Strong (1997).

the influence of the treatise, *Cur Deus Homo (Why God Became Man)* by Anselm of Canterbury. Explains one author: “However broadly Anselm conceived justice, reason required that he stop at the boundary of grace. God is bound by his own justice. If it is divinely just for a man to pay the price for his sins, it would be unjust, and therefore impossible, for God to remit the price. 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 these ultimate mysteries cannot be fitted into the concepts and constructs of the human intellect; that reason is inseparable from faith – one is not the servant of the other, but rather the two are indivisible; and 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).”

Anselm’s theory profoundly influenced the Western “cultural affect” - structural societal ethos - in all subsequent centuries. Although his theology of ‘satisfaction’, of ‘atonement’<sup>12</sup> was never proclaimed as the official doctrine of the Christian church, it was widely accepted both in Catholicism and Protestantism and was to have devastatingly negative effects especially when applied to the criminal justice system<sup>13</sup>. Over the differing voices of many other Western Christian interpreters, Anselm’s voice remained the strongest until well into the twentieth century.

Comments one astute theologian: “For the Church Fathers, it is the devil who – illegitimately – insists on the payment of the debt incurred by humankind. Anselm inverts this. Now it is God who, legitimately, exacts the payment of debt... In both Old and New Testaments an indebted person could be ‘redeemed’ by the payment of his or her debt. Jesus, following Deuteronomy, insists on the cancelling of debt as a fundamental aspect of

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<sup>12</sup> There have been four discernible views of the atonement in the history of the church (Bellinger, 2001, pp. 134ff), of which the second, the “satisfaction theory”, has been the most dominant in Western history since the 11th century. “The second group of theories may be said to have originated with Anselm, who saw sin as dishonor to the majesty of God. On the cross the God-man rendered satisfaction for this dishonor. Along similar lines the Reformers thought that Christ paid the penalty sinners incurred when they broke God’s law (Morris, 1974, p. 83).”

<sup>13</sup> 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 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. As St. Thomas Aquinas said almost two centuries after Anselm’s time, both criminal and civil offenses require payment of compensation to the victim; but since crime, in contrast to tort, is a defiance of the law itself, punishment, and not merely reparation, must be imposed *as the price for the violation of the law* (Berman, 1983/1997, p. 183. Italics in original; boldface mine).”

Christian practice. Anselm, however, makes God the one who *insists* on debt. The debt humanity has incurred must be paid with human blood. The God who rejected sacrifice now demands it... From the start sacrifice and satisfaction run together... The God who liberates from law is now, in Anselm, understood as hypostasised, personified law... What remains... is a mysticism of pain which promises redemption to those who pay in blood. In this move a most fundamental inversion of the gospel is achieved, which prepares the way for the validation of criminal law as the instrument of God's justice instead of what it is in the gospel, an alienating construction which is at best a tragic necessity.

“The penal consequences of this doctrine were grim indeed. As it entered the cultural bloodstream, was imaged in crucifixions, painted over church chancels, recited at each celebration of the Eucharist, or hymned, so it created its own structure of affect one in which earthly punishment was demanded because God himself had demanded the death of his Son (Gorringe, 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*. (That's why by contrast the Stephen King novel and movie, *The Shawshank Redemption*, is so gripping!)

The scapegoat mechanism mentioned earlier as discerned by René Girard is “simply a generative scapegoat principle which works unconsciously in culture and society<sup>14</sup>.” In the 1989 execution of serial killer Theodore Bundy, hundreds of men, women and children camped outside the Florida prison in a festive spirit one reporter likened to a *Mardi Gras*. The same reporter described the event as “a brutal act.. [done] in the name of civilization<sup>15</sup>.” Bailie reflects on that commentary thus: “It would be difficult to think of a more succinct summation of the underlying anthropological dynamic at work: *a brutal act done in the name of civilization*, an expulsion or execution that results in social harmony. Clearly, after the shaky justifications based on deterrence or retribution have fallen away, this is the stubborn fact that remains: a brutal act is done in the name of civilization. If we humans become too morally troubled by the brutality to revel in the glories of the civilization made possible by it, we will simply have to reinvent culture. This is what Nietzsche saw through a glass darkly. This is what Paul sensed when he declared the old order to be a dying one (I Cor. 7:31). This is the central anthropological issue of our age<sup>16</sup>.” (This was too, incidentally, the central motivation for Sister Helen Prejean's participation in the production of the movie *Dead Man Walking*. She writes, in the book by the same title: “I am convinced that if executions were made public, the torture and violence would be unmasked, and we would be shamed into abolishing executions<sup>17</sup>.”)

Girard's serious engagement with the biblical texts led to a major discovery for him: the Christian New Testament is the ultimate demythologizer of all cultural norms of violence. “The third great moment of discovery for me was when I began to see the uniqueness of the

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<sup>14</sup> Williams, 1996, p. 294.

<sup>15</sup> Bailie, 1995, p. 79.

<sup>16</sup> *ibid*, p. 79.

<sup>17</sup> Prejean, 1993, p. 197.

Bible, especially the Christian text, from the standpoint of the scapegoat theory. The mimetic representation of scapegoating in the Passion was the solution to the relationship of the Gospels and archaic cultures. In the Gospels we have the revelation of the mechanism that dominates culture unconsciously<sup>18</sup>.” In particular, this has led to a totally nonviolent rereading of the atonement. Instead of a scapegoating “satisfaction theory” one author designates a “mysticism of pain which promises redemption to those who pay in blood<sup>19</sup>”, Girard claims “that scapegoating does not play an essential role in the Gospels, whereas it has an enormous role in myths since it generates them.... Christianity [witnesses] to the God who reveals himself to be the *arch*-scapegoat in order to liberate humankind<sup>20</sup>.”

Girard’s reading of the Gospel texts turns the dominant satisfaction theory of the atonement on its head<sup>21</sup>. He sees the scapegoat mechanism operative in the crucifixion to participate in the universal murderous lie upon which all cultures are founded and from which the Jesus story is the ultimate liberation.

Another writer asks in application of the earlier mentioned Girardian scapegoat theory, “Is it possible that what we call a criminal justice system is really a scapegoat mechanism (Redekop, 1993, p. 1)?” He continues later: “In a secular democratic society, nothing is as sacred as the law code and the justice system which enforces it. The buildings in which laws are made are the most elaborate and the courts in which decisions are made about points of law are the most stately. Formality, uniforms, and respect surround the agents of law (Redekop, 1993, p. 16).” He finally states baldly: “It is possible to think of the criminal justice system as one gigantic scapegoat mechanism for society.... [A] tiny percentage of offenders who are severely punished can be thought of as a collective scapegoat for society (Redekop, 1993, pp. 33 & 34).”

The entire Girardian project in reading the Bible points to a profound *nonviolent image* of God. It discerns a dynamic of subversion within the Judeo-Christian tradition itself whereby God is eventually shorn of all violent attributes. It is a process “in travail”, whose culmination in Jesus on the Cross is the ultimate negation of all violence in God and hence humanity. Says one commentator: “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 (Bailie, 1995, p. 83).”

Since Constantine pragmatically and politically, and since Anselm theologically, the church has inconceivably claimed legitimacy for *the very violence that killed its Founder!* It further arrogated to itself, and society under its influence, that same rightfulness. This is the most amazing inversion of Christian spirituality in the long history of the Church.

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<sup>18</sup> Williams, 1996, p. 263.

<sup>19</sup> Gorringer, 1996, p. 102.

<sup>20</sup> Williams, 1996, p. 263.

<sup>21</sup> This is the sustained presentation in *I See Satan Fall Like Lightning* (2001). See also Bellinger (2001), “Conclusion: The Healing of the Soul”, pp. 134ff.

René Girard, and the plethora of articles and books inspired by his writings, point to a reading of God in the Christian Scriptures “which is absolutely incompatible with any perception of God as involved in violence, separation, anger, or exclusion (Alison, 1996, p. 48.)” Read as fundamental texts of cultural deconstruction, the Christian Scriptures emerge as radically demythologizing texts<sup>22</sup>.

The highly violent nature of the Western legal tradition would have been vastly different had this arguably more faithful reading of the founding texts been dominant. That is in fact the burden of Timothy Gorringer’s masterful work, *God’s Just Vengeance* (1996), which profoundly critiques Anselm’s satisfaction theory of the atonement.

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, to lead Crusades and persecute others totally reversed what the Cross had originally stood for in Jesus’ death and resurrection. “ ‘Quick, head off, away with it, in order that the earth does not become full of the ungodly.’ The voice is distinctly Martin Luther’s. Rulers are the ministers of God’s wrath, Luther insisted, whose duty it is to use the sword against offenders. They are ‘God’s hangmen’ (Gorringer, 1996, p. 131).” Luther is merely representative of Protestant and Catholic violently punitive church theory and practice dominant since the 11th century.

Vern Redekop in the book earlier quoted<sup>23</sup> has best explored the implications of Girard’s New Testament reading for criminal justice.

The ‘modern prison’ was to drastically grow during the 19<sup>th</sup> century as the new form of punishment but the punitive attitude in the church remained alive and well. As Gorringer says: “For those who hope to find in the witness of the church some signs of the work of the Holy Spirit an examination of the role of the church in the penal debates of the nineteenth century is depressing indeed. From start to finish the bishops proved staunch supporters of flogging and hanging. When the Duke of Argyll echoed Luther in calling society a minister of divine justice in imposing capital punishment, Samuel Wilberforce, the Bishop of Oxford, cried, ‘Hear, hear!’ In a debate on flogging in 1883 the Bishop of Rochester, in an extraordinary unpleasant intervention, said that offenders should be ‘scoured to the bone’. In the prison chaplains were not simply functionaries, but often did their best to extract confessions of guilt, and in attending executions gave divine sanction to legal violence<sup>24</sup>.”

Through the centuries, the restorative voice of the gospel did not die completely and found deep echoes in the Anabaptist tradition for instance, and elsewhere, but, in the words of the

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<sup>22</sup> This theme of “demythologising” or “demystification” is especially developed by René Girard in *I See Satan Fall Like Lightning* (2001). See in particular Chapter 11, “The Triumph of the Cross”, pp. 137 – 153.

<sup>23</sup> Redekop (1993).

<sup>24</sup> Gorringer, 1996, p. 211.

Most Rev. E.W. Scott, “[...] all too often the State has claimed divine authority for legal actions for which no such authority exists. In this process the Church, which should have been challenging or critiquing the civil authority from a Biblical perspective, has too often allowed itself to be ‘domesticated’ and has blessed and sanctioned when it ought to have challenged<sup>25</sup>.”

In the first centuries CE, as the Church and the State were defining their own identity, they engaged in a duet of cooperation. In the twelfth century, the duet truly became a dual where the dividing lines of power were clearly drawn. It led, during the modern period, to full disengagement. 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. Will the Restorative Justice treasure remain deeply buried or will the Christian church have the courage to raise a prophetic voice within the criminal justice system? A decisive answer is urgently needed.

There is an excellent Chaplaincy document that reads in part: “Restorative Justice can help reduce the level of pain so that healing may begin to take place, but it should never be forced on anyone. If it is embraced freely, it can have deep and lasting effects on individuals and communities. Our goal is to seek Shalom, harmony and security for all, with reconciliation and healing replacing revenge and pain.

“We believe that the search for true and satisfying justice is forever linked to the spiritual growth of all concerned. The path of over-incarceration, of a vengeful spirit and a punitive mentality, can only dry up the soul of our country (*A Call for Justice*, Interfaith Committee on Chaplaincy in the Correctional Service of Canada, September 1997).”

From Matthew 5 - 7 and Luke 6 to Romans 5:6 - 11 and 12:1-21; from 2 Corinthians 5:11-21 to Ephesians 2:11-22 and 5:1 & 2, and in many other passages of the New Testament, one can recapture the heartbeat of God for restoration, reconciliation and peaceful communities. Although other passages such as Romans 13, 1 Peter 2 and Titus 3 were often read politically and used to justify wars, crusades and vengeful attitudes towards offenders, we are not left with an irreconcilable dilemma.

“Our fundamental hermeneutic principle must be derived from the overall *direction* of the New Testament documents. The central story they tell speaks of God’s movement ‘downwards and to the periphery, his unconditional solidarity with those who have nothing, those who suffer, the humiliated and injured’. This represents a diametrically opposite perception to the Roman view, which assumed that, as Caesar once said to his rebellious soldiers, ‘as the great ordain, so the affairs of this world are directed’. The crucifixion of Jesus, on the other hand, constitutes ‘a permanent and effective protest against those structures which continually bring about separation at the centre and the margin.’ It is this protest rather than an endorsement of expiatory sacrifice, which is the heart of the New Testament witness. Turning Christianity into a cult centred on an

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<sup>25</sup> Scott, 1981.

expiatory death achieved long ago, and honoured in the present by other - or inwardly asceticism, represented an easy option, a refusal of the costliness of the gospel ethic, of a realization of the Jubilee prescriptions. The recovery of a text of protest and critique would serve to create quite different mentalities and structures of affect from those avowed by Christendom<sup>26</sup>.”

Over the last twenty-five years, in many countries, there have been a number of initiatives challenging us to go beyond a retributive justice to a Restorative Justice. These initiatives have been emerging signs of hope calling for a radical reengagement of the Christian faith in criminal justice issues from a Restorative Justice perspective. A brief mention of some of these trends seeks to open vistas on the new paradigm:

Victim Offender Reconciliation Programs (VORP): Pioneered by Canadians over twenty-five years ago, the VORP programs demonstrated that there are better ways than incarceration for many types of offenses. Used at first in property crimes, the Victim Offender Mediation Program (VOMP)<sup>27</sup> in British Columbia, Canada is ample proof over the last several years that, properly done, victim offender mediation can be successfully applied in the most serious of cases.

Church Council for Justice and Corrections (CCJC): Relentlessly through the years CCJC has engaged the churches of Canada on a journey of rediscovery of the theological/biblical foundations of a more satisfying, transformative, real justice. CCJC played a significant role in the abolition of capital punishment in Canada and has provided the churches with many valuable hands-on tools in the area of criminal justice<sup>28</sup>.

CSC Mission and NPB Mission: The missions of both the Correctional Service of Canada and the National Parole Board are a commitment to enlightened corrections where offenders, victims and the communities must be treated with respect and professionalism of the highest order<sup>29</sup>.

New Partnerships: As never before, new partnerships between various government departments and the private sectors are being formed to move forward a Restorative Justice agenda. Circle sentencing, family conferencing, restorative parole, etc. are now the subject of daily conversation in many government quarters. There is locally, under Correctional Services Canada, a “Restorative Justice Council” composed of government and non-government persons. It promotes the Restorative Justice agenda widely throughout federal Corrections on the West Coast<sup>30</sup>.

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<sup>26</sup> Gorringer, 1996, p. 82.

<sup>27</sup> For a copy of two evaluations of this program, and more on the program itself, write: FRCJIA, 101 - 20678 Eastleigh Cres., Langley BC, V3A 4C4, CANADA.

<sup>28</sup> One of its most helpful resources for this discussion is *Satisfying Justice* (CCJC 1996).

<sup>29</sup> May be ordered from CSC Chaplaincy, 340 Laurier Ave. W., Ottawa Ontario, K1A 0P9, CANADA. Of course theory, as talk, is cheap! It's how these statements are lived out that makes the difference!

<sup>30</sup> A Restorative Justice guide was produced by them, which may be ordered by contacting: Nellie Taylor or Edi Martin: Phone (604)826-5765; Fax (604)826-5519; Box 50, 33737 Dewdney Trunk Road, Mission BC, V2V 4L8.

Community Chaplaincies/Circles of Support: These growing initiatives seek to involve the faith communities in playing a more significant role with offenders and victims and ensuring that crime is returned to the communities for creative solutions<sup>31</sup>.

Restorative Justice Week: This yearly event in November is proving to be one of the most effective educational tools to sensitize people of faith to the challenges of doing justice in a biblical way<sup>31</sup>. There is also an annual Restorative Justice Conference hosted by Ferndale Institution in Mission, open to the public<sup>30</sup>.

A Call to Justice: This 1997 proclamation by the Interfaith Committee on Chaplaincy in the Correctional Service of Canada deserves to be publicized more widely as it is a call to Restorative Justice by rediscovering our spiritual roots<sup>31</sup>.

These are but a few examples among many initiatives engaging the churches in a reexamination of their attitudes in the criminal justice system.

William Stringfellow has written: “There comes a moment when words must either become incarnate or the words, even if literally true, are rendered false (1973, p. 21)”.

At the end of our journey toward the understanding of the spiritual roots of Restorative Justice within Christianity, if it is true that the Christian Church:

- \* lost its ‘scriptural’ understanding of justice,
  - \* was deeply influenced by the Roman slavery concept of law,
  - \* fell prey to a theology of punishment and vindication,
  - \* and must rediscover the richness of its heritage,
- then, such a recovery is a call to repentance and conversion, to creativity and community.

A call to repentance and conversion: As a Christian becomes a pilgrim on the roads of history and realizes how the message of Christ was subverted, misused to oppress, there is a call to humble repentance and personal conversion. It should lead to a commitment to influence through servanthood and not through power and to daily seek a change of heart as the line dividing good and evil cuts through the heart of every human being.

A call to creativity: As Christians return to the spiritual roots of Restorative Justice they will be challenged to discover new ways of doing justice. They will have to learn to dream new dreams and pursue new visions. It is a call to co-operation, partnership in new creative ways.

A call to community: Most fundamentally, Restorative Justice is a call to build new communities where acceptance and reconciliation are realities. Restoration and reconciliation are lived in the community of the covenant of love between God and

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<sup>31</sup> For more information, please contact: CSC Chaplaincy, 340 Laurier Ave. W., Ottawa Ontario, K1A 0P9, CANADA.



humankind. Being a follower of Christ is far more than experiencing a personal conversion. It is becoming part of a community committed to justice in a world of injustices, a community committed to listening to all sides when crime happens, a community committed to truth beyond the guilty/not guilty dichotomy and a community committed to offering opportunities for reparation and peacemaking so that offenders and victims find healing in a community of hope.

“Assured of God’s justice and undergirded by God’s presence, they [the Christians] are to break the cycle of violence by refusing to be caught in the automatism of revenge. It cannot be denied that the prospects are good that by trying to love their enemies they may end up hanging on a cross. Yet often enough, the costly acts of nonretaliation become a seed from which the fragile fruit of Pentecostal peace grows – a peace between people from different cultural spaces gathered in one place who understand each other’s languages and share in each others’ goods<sup>32</sup>.”

The God of Jesus Christ calls us to nothing less.

### *Conclusion*

In 1993 Lee Griffith published *The Fall of the Prison: Biblical Perspectives on Prison Abolition*. His is a *tour de force* on a spirituality of penal abolition<sup>33</sup>. The book’s opening shot is: “The gospel is profoundly scandalous, and until we hear at least a whisper of its scandal, we risk not hearing any part of it (Griffith, 1993, p. 1).” He presents his thesis in beguilingly simple terms: “Ultimately, there are not two kingdoms but one - the kingdom of God... ‘Freedom to the captives’ is not proclaimed [by Jesus] 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 (Griffith, 1993, p. 28).”

*How indeed can a Christian spirituality, responsive to the liberating thrust of the New Testament founding texts, so utterly contradictory to state-sanctioned scapegoating violence, support penal (pain delivery!) justice? That is the “peculiar question” this paper leads to.*

A contemporary theologian writes: “...the human walk... begins in slavery and ends in freedom, and [its] point of progress at every moment is faith (Johnson, 1990, p. 11).” That is the quintessence of spirituality arising from the Judeo-Christian narrative. It shouts from the housetops: “Freedom for the prisoners (Luke 4:18)!” and “It is for freedom that Christ has set us free (Galatians 5:1)!”

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<sup>32</sup> Volf, 1996, p. 306.

<sup>33</sup> He has subsequently published *The War on Terrorism and the Terror of God* (2002), that does to the theme of state violence/terror what his first book does to state prisons.

René Girard states: “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; it is not a chronologically progressive process, but a struggle that advances and retreats. I see the Gospels as the climactic achievement of that trend, and therefore as the essential text in the cultural upheaval of the modern world (Hamerton-Kelly, 1987, p. 141).” If Girard is right, part of that “cultural upheaval” is penal abolition and transformative justice.

One writer commented on Griffith’s book thus: “Jesus said he had come to proclaim release to the prisoners. In *The Fall of the Prison* Lee Griffith makes what Jesus meant altogether clear. Now it is for us who have ears (quoted in Griffith, 1993, back cover).”

Indeed! What is needed is a spirituality of transformative justice with ears - then hands and feet!

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