

Restorative Justice¹ Then, Now and A Dream

By Wayne Northey

Restorative Justice Then

In 1974 two youths who had been drinking and had been “talked to” by the police already, took out their frustrations on the small community of Elmira, Ontario, Canada by doing damage to twenty-two different vehicles and homes. Several months later the youths pleaded guilty to the charges, and the Judge ordered a Pre-Sentence Report. The Mennonite Probation Officer writing up the report discussed the case with the local Mennonite court volunteer. As it turned out, both had been reading recent publications by the “Law Reform Commission of Canada” in which it had been stated *that reconciliation played an important role in criminal justice*. They also knew that *reconciliation* was the central concept of their Christian faith, one committed to *peacemaking*. They decided to suggest a novel sentencing idea to the Judge: **ordering offenders first to “make it right” with their victims.**

The Judge indicated that the notion had lots of merit, but it was simply not done in Western jurisprudence. He made a fateful choice nonetheless when he decided “Why not?”; and put the sentencing over until the youths had met each of the victims who were willing. Out of that resultant positive experience arose the first ever “Victim Offender Reconciliation Project (VORP)”, later to become known widely as Victim Offender Mediation.

This so-called “Elmira Case”² became a kind of proverbial shot that echoed around the world; acknowledged widely as the first ever justice system programmatic expression of Restorative Justice in the modern world.

By happenstance, providential for me at least, two years later I became second Director of that program, under Mennonite Central Committee Ontario. That launched me on a wonderful Restorative Justice journey ever since.

A Little Bit of History and Anthropology³

To set a context, some simplified historical and anthropological comments would be helpful.

A. History

Almost a millennium ago, in the late 11th century, European history underwent a *revolutionary* upheaval some in fact call “The Papal Revolution” (Berman, 1983/1997). During this time, the Church under Pope Gregory VII moved to consolidate its power over all souls and kings of Europe; the first great universities began to emerge; and the Western legal tradition started to take shape, as new laws based on newly discovered Roman Justinian law codes were formulated for study and eventual promulgation throughout the Western world.

¹ A massive body of literature has emerged. A superb early study is *Restoring Justice* (Strong and Van Ness, 1997). A great early overview of the wider context is *The Expanding Prison* (Cayley, 1998). The first major study was *Changing Lenses* (Zehr, 1990) - considered a classic. The two best Christian theological studies are Chris Marshall’s *Beyond Retribution: A New Testament Vision for Justice, Crime, and Punishment* (Eerdmans, Grand Rapids, 2001); and *Compassionate Justice: An Interdisciplinary Dialogue with Two Gospel Parables on Law, Crime, and Restorative Justice* (Eugene Oregon: Cascade Books, 2012.) An anthology of early writings on Restorative Justice is *Restorative Justice: Ideas, Values, and Debates*, Gerry Johnstone (Devon, UK: Willan Publishing, 2002). The first and enduring Restorative Justice website is [here](#).

² See a fuller account in Dean Peachey’s “The Kitchener Experiment” (1989).

³ I am drawing on the work of Berman (1983/1997), Strong and Van Ness (1997), and Girard, in particular: (1977); (1986); (1987) and (2001).

In a fateful interplay between Church and Society, the secular realm began to follow the lead of how the Church dealt with its *religious heretics*. These “*social heretics*” began to emerge under new state law codes as “criminals” whose victims were no longer the actual victims, but eventually “*Rex*” or “*Regina*” in the British common law system instituted throughout Britain’s history and Commonwealth, or “We the People” under the United States Constitution, etc.

The evolution of emerging criminal justice systems in the West turned away from *community restoration and victim centred justice* towards *state and offender centred justice*. The former had been a dominant approach in the ancient Hebrew culture; in Roman society when applied to its own citizens; and in most pre- and post-colonial worldwide indigenous cultures; in pre-11th century Europe as well.

As Norwegian criminologist Nils Christie wrote provocatively, the state began thereby to *steal the criminal conflict from the community*⁴. It is still a shock for some victims to discover that they are not even named on the court docket, having for instance a millennium ago been displaced by *Rex*, *Regina* or “*We the People*”. One victim of rape I know of describes a fantasy of phoning Queen Elizabeth in Buckingham Palace on each anniversary of the assault to ask her how she is doing!

The *purpose* of the law shifted dramatically as well. Earlier, the emphasis had been on *making the victim and violated community whole again*, what in the ancient Hebrew culture was called “restoring *shalom*”. With the eventual rise however of monarchical power, and later with the emergence of nation states, the purpose became *to uphold the authority of the realm/state*. This only accelerated with the emergence of the modern “state” in Europe between about 1450 and 1650 (Cavanaugh, 2011, p.9).

There was dominant Western religious undergirding of this approach which led to a marriage of law and religion⁵ that placed, on the one hand, *primary emphasis upon the offender's violation of the law* while dropping any concern for *rehabilitation of the victim and restoration of peace to the community*. On the other hand, it drew on *Roman slave law as model* for meting out the worst of punishments imaginable upon the offender.⁶ This form of response to crime as we know is *retributive or punitive justice*, and has dominated Western jurisprudence for a millennium.

B. Ubiquitous Cultural Scapegoating Violence and Criminal Justice

Where did such violent notions of punishment originate?

When the above question is asked generically, even of all cultures, anthropologist René Girard argues that the *founding moment* of every society known to history is in fact *violence*. All human societies then initiate a *scapegoat mechanism* in order to contain the violence and restore social cohesion.

Such a *scapegoat mechanism* arises to siphon the violence away from the community, thereby creating peace for a time for the rest of society. In religious cultures, this kind of violence invariably took the form of myths, rituals, and prohibitions legitimizing the violence against the scapegoated target or targets. In Christian cultures, this form of violence for instance especially in response to offenders, was supported and spread by the *satisfaction theory* of the *atonement* (why Christ died)⁷. In the secular West, the ultimate instance of the same

⁴ Nils Christie wrote: “The victim in a criminal case is a sort of double loser in our society... He is excluded from any participation in his own conflict. His conflict is stolen by the state, a theft which in particular is carried out by professionals (1981, p. 93).” He drew upon his earlier classic essay entitled “Conflicts as property” (1977).

⁵ See Gorringer (1996).

⁶ Herman Bianchi explicates this extensively in *Justice as Sanctuary* (1994).

⁷ See Gorringer (1996).

dynamic in sheer numbers is the Holocaust. One could adduce myriad further examples: destruction of indigenous peoples and cultures worldwide; enslavement and oppression of Blacks in America; the mass murder of Tutsis in Rwanda, etc., etc. Girard claims there is no culture or society free of this *foundational scapegoat mechanism*.

It was precisely over against the excesses of various forms of scapegoating violence that well-meaning Christian philanthropists tried in 1790, in Philadelphia, Pennsylvania, to move away from *physical punishments* towards an emphasis instead upon *reformation* of the criminal. If only they could lock wrongdoers into a jail cell with a Bible and a rule of silence, surely the violence would cease, and the criminal would become “*penitent*”! The new institution became of course known as a “*penitentiary*”. The new *motive* was *rehabilitation*, not *retribution*. The first such “*penitentiary*” was the repurposed Walnut Street Jail in Philadelphia.

The idea caught on throughout the Western world like wildfire. But, it soon became evident that, whereas former means of scapegoating administered *physical* wounds that eventually would heal, the penitentiary began to inflict *psychic* harms that rarely ever mended. Though not the intent, a *new scapegoat mechanism* arose in the form of the penitentiary that indeed tended to destroy the very *soul* and *self-worth* of the prisoner. Then where did that lost soul ever after fit into society?⁸

Early in the development of Restorative Justice in Canada, Professor Vern Redekop⁹ authored a widely received piece: *Scapegoats, the Bible, and Criminal Justice: Interacting with René Girard* (1993). In it he posed the question:

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

He then analysed Girard’s thesis on ubiquitous cultural scapegoat mechanisms; and answered the question he posed affirmatively (later receiving Girard’s approbation). Redekop wrote:

It [*is*] possible to think of the criminal justice system as *one gigantic scapegoat mechanism for society* (p. 33, emphasis in original).

He explained:

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 sentences it turns out that we in Canada imprison in the order of 3% of criminals... 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 themselves¹⁰ (pp. 33 and 34, emphasis added).

⁸ Michel Foucault’s *Discipline and Punish: The Birth of the Modern Prison* (1978) presents this well.

⁹ Professor Redekop has been working creatively in conflict studies for decades. You may see more of his work, also in relation to René Girard, [here](#) (last accessed March 20, 2017).

¹⁰ Gil Bailie (1995) supplies a particularly sinister example, the 1989 execution of serial killer Theodore Bundy, when 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 (p. 79).

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 (*ibid.*, p. 79, emphasis in original).

In this context of criminal scapegoating, Restorative Justice poses perhaps the most troubling yet simple rhetorical question: “*Why harm people who harm people to teach people that harming people is wrong?*”

The Restorative Justice vision moves away from a warmaking, “*stigmatizing shaming*” scapegoat mechanism to a “*reintegrative shaming*”¹¹, peacemaking way of nonviolence in a bid to break definitively with the endless cycles of recurrent scapegoating violence in Western and Western-based criminal justice.

Restorative Justice Now

In less than half a century, Restorative Justice has become, if not a household name, one to reckon with in criminal justice virtually in any part of the Western world, and in countries under Western cultural influence – which is to say almost everywhere.

In Canada not only did **Restorative Justice** in 1975 find first criminal justice system expression anywhere in the West. There was subsequently the development of a related community justice expression, **Circle Sentencing**, another Canadian first that began in Canada’s North, the Yukon Territories, in 1992, drawing on indigenous ways of doing justice¹². Another Canadian first was in 1994 when the first Circle spontaneously happened around a released sex offender who by law was to be returned from prison to the community – in this case to Hamilton Ontario¹³. This development became known as **Circles of Support and Accountability (CoSA)**. Both later Restorative Justice programs have spread worldwide.

A fourth Canadian first was launched just in British Columbia by Catholic Charities Justice Services (June 4, 2016¹⁴): **Healing Circles of Support (HCS)** that forms a supportive Circle around a victim when other supports fall away. Time will tell how widely this initiative will be embraced.

Other Restorative Justice initiatives that have spread worldwide include:

- Victim Offender Mediation – based on the original Elmira Case in Canada;
- Family Group Conferencing/Family Group Decision Making;
- Conferencing (pre- and post-sentencing, pre-release)
- Restorative cautioning (Police);
- Restorative Practices in schools

As well, prison chaplaincy the world over has embraced Restorative Justice practices¹⁵; as do worldwide prison visitation programs; and a range of various community justice initiatives.

Restorative Justice: Future

In 2004 Desmond Tutu published a wonderful book: *God Has a Dream: a Vision of Hope For Our Time*. He drew on the language of arguably one of the most famous speeches of all in recent times by Dr. Martin Luther King, Jr.: “I Have a Dream”, delivered August 28, 1963 at the Lincoln Memorial, Washington DC. Part of the speech went like this:

I have a dream that one day this nation will rise up and live out the true meaning of its creed: “We hold these truths to be self-evident, that all men are created equal.”

I have a dream that one day on the red hills of Georgia, the sons of former slaves and the sons of former slave owners will be able to sit down together at the table of brotherhood.

¹¹ The classic book on this idea is Braithwaite (1989). A good brief online resource is [here](#) (last accessed March 25, 2017).

¹² See Stuart (1997). See also Pranis, K., Stuart, B., & Wedge. M. (2003.)

¹³ That story is told [here](#) (last accessed March 25, 2017).

¹⁴ See: [Healing Circles of Support](#).

¹⁵ An international journal reflecting this, sent to chaplains worldwide, is [Justice Reflections](#).

I have a dream that one day even the state of Mississippi, a state sweltering with the heat of injustice, sweltering with the heat of oppression, will be transformed into an oasis of freedom and justice.

I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.

I have a *dream* today!

I have a dream that one day, down in Alabama, with its vicious racists, with its governor having his lips dripping with the words of “interposition” and “nullification” -- one day right there in Alabama little black boys and black girls will be able to join hands with little white boys and white girls as sisters and brothers.

I have a *dream* today!

I have a dream that one day every valley shall be exalted, and every hill and mountain shall be made low, the rough places will be made plain, and the crooked places will be made straight; “and the glory of the Lord shall be revealed and all flesh shall see it together.”

This is our hope, and this is the faith that I go back to the South with (King, Jr., 1963).

Amen!

In conclusion, I will play an excerpt from singer/composer Ken Medema about this kind of dreaming, likewise inspired by Dr. King: “[*Is There a Place for Dreaming?*](#)”

References

Bailie, Gil (1995). *Violence Unveiled: Humanity at the Crossroads*, New York: Crossroad.

Berman, Harold J. (1983/1997). *Law and Revolution: The Formation of the Western Legal Tradition*, Cambridge: Harvard University Press.

Bianchi, Herman (1994). *Justice as Sanctuary: Toward a New System of Crime Control*. Bloomington: Indiana University Press. (A recent republication is in 2009/10 by Oregon: Wipf & Stock.)

Braithwaite, John (1989). *Crime, Shame and Reintegration*, New York: Cambridge University Press.

Cavanaugh, William T. (2011). *Migrations of the Holy: God, State, and the Political Meaning of the Church*, Grand Rapids: Eerdmans.

Cayley, David (1998). *The Expanding Prison: The Crisis in Crime and Punishment and the Search for Alternatives*, Toronto: Anansi Press.

Christie, Nils (1977). “Conflicts as Property”, *British Journal of Criminology*, 17, 1 – 19.

Christie, Nils (1981). *Limits to Pain*, Oxford: Martin Robertson.

Foucault, Michel (1977). *Discipline and Punish: The Birth of the Modern Prison*, Hammondsworth: Penguin.

Girard, René (1977) *Violence and the Sacred*. Baltimore: Johns Hopkins University;

_____ (1986) *The Scapegoat*, Baltimore: The Johns Hopkins University Press

_____ (1987); *Things Hidden since the Foundation of the World: Research Undertaken in Collaboration with Jean-Michel Oughourlian and Guy Lefort*, Stanford: Stanford University Press.

_____ (2001) *I See Satan Fall Like Lightning*, New York: Orbis.

Gorringer, Timothy (1996). *God's Just Vengeance: Crime, Violence and the Rhetoric of Salvation*, Cambridge: Cambridge University Press.

Haley, John (1989). "Confessions, Repentance, and Absolution," Martin Wright and Burt Galaway, eds., *Mediation and Criminal Justice: Victims, Community, and Offenders*, Newbury Park, CA: Sage Publications.

McCold, Paul (1997). *Restorative Justice: An Annotated Bibliography*, Monsey: Criminal Justice Press.

Peachey, Dean (1989). "The Kitchener Experiment", Martin Wright and Burt Galaway, eds., *Mediation and Criminal Justice: Victims, Community, and Offenders*, Newbury Park, CA: Sage Publications.

Pranis, K., Stuart, B., & Wedge, M., (2003.) *Peacemaking Circles – From Crime to Community*. St.Paul, MN: Living Justice Press.

Redekop, Vern (1993). *Scapegoats, the Bible, and Criminal Justice: Interacting with Rene Girard*, Akron PA: Mennonite Central Committee (found on [this website](#), last accessed March 19, 2017).

Strong, Karen Heetderks and Dan Van Ness (1997). *Restoring Justice*, Cincinnati: Anderson Publishing Company.

Stuart, Barry (1997). *Community Peacemaking Circles*, Ottawa: Department of Justice.

Tutu, Desmond (2004). *God Has a Dream: a Vision of Hope For Our Time* (New York: Doubleday).

Zehr, Howard (1990). *Changing Lenses: A New Focus for Crime and Justice*, Scottdale: Herald Press.