

Chapter 3: Restorative Justice: Peacemaking Not Warmaking; Transformative Justice: Penal Abolitionism Not Prison Reform¹

Appreciation goes to Dr. Bradley Jersak,² friend, encourager, mentor. In October 2020 at his invitation a Q & A format was adopted for a presentation on what most commonly is known as "Restorative Justice."³ What follows is a reworking of that material and addition of new. I decided to retain the Q & A format.

Q: Jersak. Wayne, you claim that the modern nation-state is closer in origin to what was dramatized by Marlon Brando's character in *The Godfather*: namely the modern Western nation-state originated and operates on similar principles to a criminal protection racket. Historian/theologian William Cavanaugh states:

The main difference between Uncle Sam and the Godfather is that the latter did not enjoy the peace of mind afforded by official government sanction.⁴

I understand you to mean: the State vis à vis external enemies — of whatever in-the-moment flavour — and in its exercise of population control (that is control of its domestic enemies — criminals).

A: Northey. Yes. One could get at this in several ways, of which I'll give three pointers:

It's an obvious truism that criminal lawmaking and enforcement are functions not of innate universal moral principles — kinds of Kantian moral categorical imperatives — but as the late Norwegian criminologist Nils Christie⁵ argues, they are function of power *élites* who establish the laws then enforce them through the agency of a coercive state apparatus: *The Criminal Justice System*. In other words, despite otherwise vaunted Law School 101 claims of noble origins, British Common Law on which our Canadian legal system rests, similarly the American "We the People" Criminal Justice System (with similar origins), are generated by oligarchs on their own behalf: economically, legally, socially, etc.

Professor Vern Redekop,⁶ drawing on anthropologist René Girard,⁷ refers to such systems as societal *scapegoat mechanisms* by which the select few are prosecuted/persecuted on behalf of the many.⁸ I shall return to that.

Limiting the response to North America, in colonial times and since, when America in 1776 became the first modern democracy, and Canada became one after Confederation in 1867, neither started out with embrace of anything even close to lawmaking along the lines of

¹ First published in Northey, "Restorative Justice, Kenarchy."

² See: <https://bradjersak.com/>, accessed August 23, 2024.

³ It can be found here: Northey, "Restorative."

⁴ Cavanaugh, "FIRE," 413.

⁵ See: https://en.wikipedia.org/wiki/Nils_Christie, accessed August 23, 2024.

⁶ See: <https://www.cicr-icrc.ca/team/vern-neufeld-redekop>, accessed August 23, 2024.

⁷ See: <https://waynenorthey.com/?s=ren%C3%A9+girard>, accessed August 23, 2024.

⁸ Redekop, *Scapegoats*.

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universal moral principles and human rights — such as in the 1948 *United Nations’ Universal Declaration of Human Rights*.⁹

The legacy of this vicious reality has confronted us — *worldwide!* — with renewed vigor in enormous groundswells of protest ever since the murder of George Floyd¹⁰ in 2020.

Two of myriad examples are slavery laws from pre-Republic times in the United States, enforced by brutal slave patrols — and incidentally they were in part the origin of American policing; and the wrongful execution of *Métis* leader Louis Riel in Canada. Though not yet federally exonerated, there is, in the province of Manitoba that he founded, an annual *Louis Riel Day*¹¹ — a public holiday.

A politician touting “Law and Order” begs the questions: *Whose Law? What Ode(s)?* And a “Criminal Justice System” begs the questions: *Whose “justice”? What kind of “justice”? Is “criminal” not ironically preponderantly descriptive rather of harms the System itself metes out?*

A great book by Canadian/American activist, author and filmmaker Astra Taylor¹² has an arresting title that puts the point home: *Democracy May Not Exist, but We’ll Miss It When It’s Gone*.¹³

Noted 20th-century American sociologist Charles Tilly in “War Making and State Making as Organized Crime” posits an irrefutable maxim:

If protection rackets represent organised crime at its smoothest, then war risking and state making — quintessential protection rackets with the advantage of legitimacy — qualify as our largest examples of organised crime.¹⁴

Drawing mostly on Western European history, he continues:

This essay, then, concerns the place of organised means of violence [“protection rackets”] in the growth and change of those peculiar forms of government we call national states: relatively centralized, differentiated organizations the officials of which more or less successfully claim control over the chief concentrated means of violence within a population inhabiting a large, contiguous territory.¹⁵

Not unrelated, famed psychiatrist Karl Menninger¹⁶ in 1966 wrote *The Crime of Punishment*,¹⁷ a book that has stood the test of time — claiming punishment in the United States is hugely and disproportionately meted out by white *élites* to the poor (lower classes and minorities); and is greater annually in commission of crimes *against* prisoners than the sum total of crimes committed by all criminals in prison. Hence “the crime of punishment.”

Or in Jeffrey Reiman’s telling book title: *The Rich Get Richer and the Poor Get Prison: Ideology, Class, and Criminal Justice*.¹⁸

⁹ See: https://en.wikipedia.org/wiki/Universal_Declaration_of_Human_Rights, accessed August 23, 2024.

NOTE: *This Declaration was announced to the world on the self-same day as my coming into the world was announced to my family: December 10, 1948! I’ve loved that association!*

¹⁰ See: https://en.wikipedia.org/wiki/George_Floyd, accessed August 23, 2024.

¹¹ See: https://www.gov.mb.ca/chc/louis_riel/index.html, accessed August 23, 2024.

¹² See: https://en.wikipedia.org/wiki/Astra_Taylor, accessed August 23, 2024.

¹³ Taylor, *Democracy*.

¹⁴ Tilly, “Organized Crime,” 169 - 170.

¹⁵ Tilly, “Organized Crime,” 170.

¹⁶ https://en.wikipedia.org/wiki/Karl_Menninger, accessed August 23, 2024.

¹⁷ Menninger, *Crime*.

¹⁸ Reiman, *Richer*.

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In 1993, activist, author, and theologian Lee Griffith published The Fall of the Prison: Biblical Perspectives on Prison Abolition.¹⁹ In it we read:

But prison abolitionists have always been a small minority. In the mainstream of Christendom, church and state have been and remain prison collaborators.²⁰

To that he says by way of understatement:

‘Correctional’ management may be perfectly comfortable with the teachings of the contemporary church. But it is likely that the teachings of Jesus would wreak havoc.²¹

I shall return at length to Griffith’s theme — one seldom/never raised in the Restorative Justice field by main supporters such as Howard Zehr.

Q. *Your university education was in French and German literature, on your way — you thought — to becoming a high school languages teacher. After a rerouting and life-changing experience²² in West Berlin, Germany, upon completion of an undergraduate degree, you returned to Canada and completed a Masters in Theological Studies at Regent College,²³ Vancouver. Nothing in those studies pointed to a subsequent 40-year career of working on Restorative Justice in the Canadian Criminal Justice System, and continued involvement since retirement in 2014. A “funny thing must have happened on the way to the forum,” as it were. What altered your life course?*

A. After completion of seminary studies, I was heading towards mission work with an agency in Bogotá Colombia. But a piece of correspondence, a plane turned back to Vancouver from Seattle due to fog, and a fellow seminary friend on that plane (a story I tell sometimes), saw me begin working instead in 1977 with a brand new (begun in 1975) mediation program in Kitchener under Mennonite Central Committee Ontario. I became its second Director.

No one knew then that the “Victim Offender Reconciliation Project” — so-called at first, since this was a tentative novel venture in the Canadian Criminal Justice field — would eventually become the most replicated mediation program in the world! And it became central to the launching of a new, eventually worldwide phenomenon: *Restorative Justice*.

At Regent College I had learned the importance of thinking through one’s vocation *Christianly*. In pursuing that in practice, thought and writing with reference to *Criminal Justice*, I

¹⁹ Griffith, *Fall*.

²⁰ Griffith, *Fall*, 175.

²¹ Griffith, *Fall*, 176. Also, John Alexander, author of *Your Money or Your Life: A New Look at Jesus’ View of Wealth and Power*, writes in his dedication:

To my father, Fred Alexander. His sermons on discipleship (Luke 14: 25 – 33), preached when I was a kid, are the basis of this book. *He is an unusual fundamentalist; for he believes that inerrancy extends to the teachings of Jesus*; emphasis added. (Emphasis added.)

Anne and Fred Alexander were founders and son John Alexander was editor of *The Other Side* magazine (initially called *Freedom Now* (1965); from 1973 to 1984. (See:

https://findingaids.library.upenn.edu/records/TUSCRC_TU-SP.ACC315, accessed August 23, 2024).

John Alexander (see: <https://sojo.net/magazine/july-august-2001/virtue-irrelevance>, accessed August 23, 2024) was a prominent figure in Christian social activism, and his magazine served as platform for progressive Christian voices. After disappearing from the national radar for several years, he re-emerged as a pastor for a small house church in San Francisco.

²² Which was basis of my (only) novel, *Chrysalis Crucible*, first published in 2007, and re-published in 2015: (see: <https://waynenorthey.com/chrysalis-crucible/>, accessed August 23, 2024.)

²³ See: <https://www.regent-college.edu/>, accessed August 23, 2024.

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quickly discovered that as “all roads lead to Rome,” so all justice theology — *theo*, God; *logical*, rational thought/word about — *leads to the very centre of God’s heart!*

Q. *In light of what began our discussion: that Western nation-building was function of profound violence — what theologian Walter Wink called the very “ethos of Western civilization” — claiming all Western nation-states have participated/participate in a “domination system” — many indeed worldwide;²⁴ and anthropologist René Girard as well said the founding moment of all cultures/societies is scapegoating violence, what ideas presented early on in your growing understandings of Criminal and Restorative Justice?*

A. When I first was merging into what became the new Restorative Justice field, after having become half a century ago — in 1974 while at Regent College — a volunteer visitor of prisoners at Oakalla Prison, in the provincial Criminal Justice System of British Columbia, Canada, there was soon enough emerging awareness of many problems in contemporary Canadian Criminal Justice practices — by extension generally in Western Criminal Justice jurisdictions. This was the case in Western democracies where so many nations modelled Systems — *amazingly!* — after the tragically broken American System.²⁵ Not a great deal has changed since!

I’ll sketch out a few of them in a moment, but first a *quick word about terminology*: there has been for some in Canada a conscious rejection of the word “*victim*” in favour of “*those harmed by crime*” or the like, thereby putting the emphasis rightly on the perpetrator, and removing every hint of culpability of those harmed by crime.

My wife Esther works in an End Abuse Program²⁶ that refers to women *not* as “victims of Abuse,” *rather* as *women in abusive relationships*. The difference, though subtle, leaps out!²⁷

Those Harmed By Crime: The Orphans of Justice

In answer to your question now: first, there was initially the problem that those harmed by crime felt they were — in advocate Jerry Armenic’s words — the “orphans of justice.”²⁸

Several needs had begun to be identified, and of course continue so to the present, that can be summed up in the profound need for an experience of some kind of *fundamental justice*. There was a need somehow to set things right; to regain a sense of power over one’s life; to move on/let go.

But the Western system of law was for centuries *rarely* designed to deliver such — and though much improved across Canada and elsewhere through Police Victim Services and other initiatives, Criminal Justice Systems at best still significantly underserve the needs of those harmed by crime.

²⁴ See Wink, *Engaging the Powers*. He writes:

Violence is the ethos of our times. . .

— a pointed assessment of contemporary Western culture (Wink, 1992, 13).

²⁵ See the classic book on this: Christie, *Crime Control*.

²⁶ Please see: <https://mcccanada.ca/learn/what/categories/abuse-response-prevention>, accessed August 23, 2024. Together we also facilitate “Home Improvement” Groups of men responsible for the abuse.

²⁷ Incidentally, a friend, Charles Thornton in Washington DC, likewise has taught us to no longer use the terms “ex-prisoner,” “ex-con,” rather “*returning/returned citizen*.” *Nomenclature is important!* The idea is catching on!

²⁸ See Armenic, *Orphans*, who first coined the phrase.

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The entire orientation of the System was, and far too often *is*, towards a kind of games-playing, where rules, precedents, and 'process' were *all-important; human relationship values at best secondary*.

American Justice Oliver Wendell Holmes, Jr.²⁹ a century ago once responded to a friend's admonition to go and do justice, with the words:

I don't *do justice*, I simply *play the game* according to the rules.³⁰

But as said, one always has to ask: *Whose justice? Whose rules? Whose laws? Whose order(s)? What in the "Criminal" Justice System is in fact "criminal" in its own right?*

Virtually all the essentially human dimensions of Western jurisprudence were over the centuries squeezed out in favour of rules and gamesmanship. And hugely ironically, the system had no investment in discovering anything like the multi-layered truth of people or things. Rather, guilt-finding and pain delivery were its primary preoccupations. Further, generally, the professional players — judges, lawyers, police, prison guards, etc. — are generally bereft, one might say, of any "bedside manners": because the entire Justice System edifice from Law School to police to court to prison and back again is, by this standard, still largely, simply put, *subhuman*.

A former longstanding head Crown Attorney in Ottawa, Andrejs Berzins,³¹ used to tell us Restorative Justice advocates that until Western Law Schools themselves train their graduates otherwise, they will, but for happenstance or external existential pressure — such as from those harmed by crime — *ever overlook the human dimension*, and with it the essential *restorative* element of criminal law.³²

Those Doing Harm: Focus on Their Punishment

Second, the system was also not working for *those doing harm*.

In my personal interactions since 1974 with hundreds of those who harm others — that is from 50 years (now 2024) of professional and volunteer work in the prisons — prisoners consistently expressed largely a sense of injustice at the hands of the "System." Most in my experience admitted their own guilt, but it was a case of invoking the old adage:

*Two wrongs do not make a right.*³³

To repeat: psychiatrist Karl Menninger's 1966 book and title The Crime of Punishment was a broadly apt and accurate statement of their case.

The State's duty had been for centuries to inflict pain at a profoundly impersonal and punitive level. Criminologist Nils Christie wrote that Western state law was essentially "pain-law," concerned primarily with "pain delivery," just like "milk delivery," to which his response was:

²⁹ See: https://en.wikipedia.org/wiki/Oliver_Wendell_Holmes_Jr, accessed August 23, 2024.

³⁰ Herz, "Game," 111 - 161. There are variations to the quote and story as you may see, also variations in interpretations. The point for my purposes in the story — that *justice is a "game"* — is however undisputed.

³¹ See: <https://www.cbc.ca/news/canada/crown-attorney-retires-1.216962>, accessed August 23, 2024.

³² More on this below.

³³ See: https://en.wikipedia.org/wiki/Two_wrongs_don%27t_make_a_right, accessed August 23, 2024.

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*Dreadful!*³⁴

But the issue went deeper still. Those doing harm were often mystified by the entire process — at least the first time through. Clear perceptions were that unfortunately he/she had been caught, and the *eye-for-an-eye* model (as mistakenly understood from the biblical precept³⁵), had made justice predominantly “*tit for tat*,” that is: *retributive* and *punitive*: *societal vengeance strictly exacted like Shakespeare’s “pound of flesh.”*³⁶

To begin with, the perpetrator *instead* needed at minimum to demonstrate *accountability for harm done* for which there was historically generally no mechanism. *Then*, so much more was needed such as confession of guilt and expression of remorse (ideally) to those harmed; with a genuine prospect of reintegration into society for both those harmed and those doing/having done the wrongs . . .

Community and Conflict/Doing Justice Stolen

Third, the impacted community needed to take back its own conflict — and justice-doing. *Not vigilante justice* or worse, like the “Proud Boys,”³⁷ rather initiatives designed to help society heal.

Communities were traditionally often left with little sense of safety or reassurance in the wake of crime. As well, as Nils Christie explains it: *conflict or doing justice in Western Law long since had been stolen from the community.*

Crime was defined in terms of “lawbreaking” — *a breach of rules and regulations* set by the state — not in terms of a *break in relationships between persons*, healing of which the community was often best equipped to take at least some significant initiative.

The Penitentiary: An Utterly Disastrous Social Experiment

Finally, the System was not working *vis à vis* its many attempted *prison reforms*. Soon after the Philadelphia Walnut Street Jail³⁸ was in part repurposed to be the first ever *penitentiary*, in 1790, by 1795, the deep psychic harm done to its cloistered occupants became widely evident.

Despite this, *the penitentiary model quickly also became the most used tool of crime control in the world* — ever since. In the United States, as detailed by Nils Christie, crime control became a *pervasive industry*,³⁹ whose human “products” were consequently deeply psychologically scarred. The classic book on this was by postmodernist Michel Foucault,⁴⁰

³⁴ Christie, *Limits*, 15, 16 and 18.

³⁵ As indicated above, I have spent a 50-year career (including retirement) writing and presenting about this. And this is the fourth book in the series: *Justice That Transforms* (see: <https://waynenorthey.com/justice/justice-that-transforms/>, accessed August 23, 2024).

³⁶ See: <https://literarydevices.net/a-pound-of-flesh/>, accessed August 23, 2024.

³⁷ See: https://en.wikipedia.org/wiki/Proud_Boys, accessed August 23, 2024. In Canada, as of February, 2021, the government considers them to be a terrorist organization. See: “Proud Boys Named ‘Terrorist Entity’ In Canada.” (<https://www.npr.org/2021/05/02/992846086/proud-boys-named-terrorist-entity-in-canada>)

³⁸ See: https://en.wikipedia.org/wiki/Walnut_Street_Prison, accessed August 23, 2024.

³⁹ Christie, *Crime Control*.

⁴⁰ See: https://en.wikipedia.org/wiki/Michel_Foucault, accessed August 23, 2024.

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first published in French in 1975; in English that same year as: Discipline and Punish: The Birth of the Prison.⁴¹

A longstanding colleague and friend Ruth Morris,⁴² organized the first International Conference on Prison Abolition (ICOPA)⁴³ in Toronto in 1983, one I was privileged to have attended. She played a leading role in subsequent Conferences until her death in 2001; and received that same year Canada’s highest honour: *The Order of Canada* (which ceremony I was also privileged to have attended — in her Salmon Arm, BC home, just months before kidney cancer took her.⁴⁴)

I was also fortunate to have attended several other ICOPAs and presented at some, including the last she organized — again in Toronto. After the second ICOPA in Amsterdam (1985), I also supplied the final chapter in the Conference’s proceedings.⁴⁵

The word “Prison” was changed to “Penal” in 1987, with, to be sure, tacit acknowledgement by those participating in the movement that prisons *per se* would always be with us. But more so, as explained by Gordon West:

By the term “*penal* abolition,” we signal not only our concern with abolishing prisons as physical environments for caging human beings as we cage animals, but we also signal our commitment to transforming societies’ notions and approaches to human conflicts and wrongdoings, questioning their basics on “legalized” vengeance. Instead, we advocate the possibilities of “healing justice.”⁴⁶

Though Ruth was a committed Quaker Christian and creative scholar, it was left to Lee Griffith⁴⁷ to publish the definitive theological monograph, *Fall of the Prison: Biblical Reflections on Prison Abolition*. I shall spend more time below on Griffith’s thesis.

But first, I shall draw on three publications that are powerful abolitionist voices, and some were part of my own early formation as I embarked in 1974 upon a journey towards (Ruth’s preferred term) *Transformative Justice*.

To set the stage, speaking for Ruth and himself, Gordon West writes:

We believe that “restorative justice” alone can easily become a trap within the present penal system: to balance wrongs and rights on an imaginary scale of justice, often seeking to provide a “restoration” to a pre-existing justice which never actually existed. Instead, we seek a *transformative* or *healing justice*, which will take crime as an opportunity to get to root causes and transform them, bringing power to the community and healing to victims and offenders

⁴¹ Foucault, Discipline and Punish.

⁴² See: *Wikipedia* (https://en.wikipedia.org/wiki/Ruth_Morris, accessed August 23, 2024.) This fourth *Volume* is dedicated solely to Ruth’s trailblazing efforts to dismantle “pain-delivery” Systems — above all, prisons — through “penal abolition.”

⁴³ See: <https://justiceaction.org.au/icopa/>, accessed August 23, 2024. See also a history written by Ruth Morris: <https://waynenorthey.com/wp-content/uploads/2024/08/ICOPA-History.pdf>, accessed August 23, 2024.

⁴⁴ See Ruth’s last book: *Transcending Trauma*.

⁴⁵ Bianchi & van Swaanigen, *Abolitionism: Towards a Non-Repressive Approach to Crime*. See also: Northey, *Justice That Transforms: Volume 1*, 1-13; also in my post, here: <https://waynenorthey.com/2014/02/22/towards-a-new-paradigm-of-justice/>, accessed August 23, 2024.

⁴⁶ West and Morris, *Case*, 4.

⁴⁷ Griffith, *Fall of The Prison*.

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alike.⁴⁸

That early hesitation/critique about/of Restorative Justice proved prescient. A former “colleague” (we both worked several years under the Canadian/US Mennonite Central Committee (MCC)), Howard Zehr,⁴⁹ became a leading voice for the kind of Restorative Justice thus critiqued.

He still is touted as “grandfather” of that less-than-prophetic-more-Establishment-oriented “movement,” as indeed he is. But as all my books in the series indicate, following Ruth Morris’ lead, *that is simply, “not enough!”*

My early formative years in the movement, especially after 1977, pointed in the more radical direction, thanks largely to Ruth Morris’ mentorship. While it should not have, that difference led, sadly, to a parting of ways with Zehr — at his initiative — while we were both still working under MCC . . .⁵⁰

An early publication in my Criminal Justice journey was: *Instead of Prisons: A Handbook for Abolitionists*.⁵¹ One of the organizations listed in that book was what I became second director of in 1977, under Mennonite Central Committee Ontario: Victim Offender Reconciliation Program (VORP), begun in 1975. Initially it had been dubbed a “Project,” so tentative were its beginnings. As things turned out, in the following years, that project became the most replicated mediation program in the world. It also gave rise to the term “Restorative Justice”; and the program, though legitimately critiqued as indicated above, remains the most replicated.

This chapter as mentioned points well beyond those early fitful starts to something immeasurably grander and more encompassing. As I wrote in *Volume 1*⁵²:

What is needed, Amos (5:24),⁵³ Dorothy Day, Ruth Morris, Martin Luther King Jr.,⁵⁴ and a host of prophetic saints thunderously call for, is *vigorously radical transformation* of that *filthy, rotten system!*

Zehr’s approach to Restorative Justice by contrast lacked the radical intellectual rigor the best of the Christian (and beyond — think Mahatma Gandhi⁵⁵) prophetic tradition exhibits.

What *is* wanted is for starters a “ . . . *who-can-but-prophecy?*”⁵⁶ — Amos’ measured diatribe against “The System,” such as captured brilliantly in:

⁴⁸West and Morris, *Case*, 4. I discuss this at greater length in the same first chapter of my 2020 publication: Northey, *Justice That Transforms*, 1–6. The book series takes its title from Ruth Morris’ preferred terminology/justice mandate.

⁴⁹ See: https://en.wikipedia.org/wiki/Howard_Zehr, accessed August 23, 2024. I put “colleague” in quotation marks, for reasons explained in the Preface.

⁵⁰ Again, as explained in the book’s Preface, it need not have been so

. . .

⁵¹ PREAP, 1976.

⁵² Northey, *Justice That Transforms: Volume 1*, and slightly changed in this book’s Preface.

⁵³ *But let justice roll on like a river, righteousness like a never-failing stream!*

⁵⁴ https://en.wikipedia.org/wiki/Martin_Luther_King_Jr, accessed August 23, 2024.

⁵⁵ https://en.wikipedia.org/wiki/Mahatma_Gandhi, accessed August 23, 2024.

⁵⁶ *The lion hath roared, who will not fear? the Lord GOD hath spoken, who can but prophesy? (Amos 3:8)*

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*Gotta kick at the darkness ‘til it bleeds daylight.*⁵⁷

Justice that indeed transforms . . .

While almost 50 years old, the *Handbook* is utterly timely, as it . . . endeavors to provide a wide range of concepts, strategies, and practical education-action tools. It is of equal importance that we establish perspectives to guide us in defining caring community, while moving away from the era of mega-prisons into confrontation with many more subtle instruments of control and coercion.⁵⁸

Given the current worldwide calls to defund police, prisons, and the military, that arose in the midst of a planet-wide pandemic, this is a crucial *kairos* moment to revisit prison/penal abolitionism. “*Crucial*”⁵⁹ in connecting this not only etymologically to the word, cross, but theologically to *the radical subversion of all power structures bereft of human caring* (invariably too frequently in those state structures discussed above) *in light of the Cross*: at once *foolishness* and *stumbling-block* ever since Christ’s death. But in God’s *kairos* time,⁶⁰

*. . . Christ the power of God and the wisdom of God. For the foolishness of God is wiser than human wisdom, and the weakness of God is stronger than human strength.*⁶¹

In the *Handbook*’s “Nine Perspectives for Prison Abolitionists,” one realizes that each is as relevant now as fifty years ago. One can only wish and pray that in fifty more years, some perspectives may be less pronounced/urgent. They are (absent brief commentary):

Perspective 1: *Imprisonment is morally reprehensible and indefensible and must be abolished.*

Perspective 2: *The message of abolition requires “honest” language and new definitions.*

Perspective 3: *Abolitionists believe reconciliation, not punishment, is a proper response to criminal acts.*

Perspective 4: *Abolitionists work with prisoners but always remain “nonmembers” of the established prison system.*

Perspective 5: *Abolitionists are “allies” of prisoners rather than traditional “helpers.”*

Perspective 6: *Abolitionists realize that the empowerment of prisoners and ex-prisoners is crucial to prison system change.*

Perspective 7: *Abolitionists view power as available to each of us for challenging and abolishing the prison system.*

Perspective 8: *Abolitionists believe that crime is mainly a consequence of the structure of society.*

Perspective 9: *Abolitionists believe that it is only in a caring community that corporate and individual redemption can take place.*⁶²

⁵⁷ From Canadian singer Bruce Cockburn’s (<https://brucecockburn.com>, accessed August 23, 2024) “*Lovers in a Dangerous Time*” (https://en.wikipedia.org/wiki/Lovers_in_a_Dangerous_Time, accessed August 23, 2024)

⁵⁸ PREAP, *Handbook*, 8.

⁵⁹ French, from Latin: *crux*, meaning cross.

⁶⁰ See: <https://en.wikipedia.org/wiki/Kairos>, accessed August 23, 2024.

⁶¹ I Corinthians 1: 24b-25. I reflect, on this on my website, in light of the Cross, on this trilogy of state power structures in “*War, Police, and Prisons: Cross-Examining State-Sanctioned Violence.*” (<https://waynenorthey.com/2015/03/17/war-police-and-prisons-cross-examining-state-sanctioned-violence/>, accessed August 4, 2024) It is also in Northey, *Justice That Transforms: Volume Three*, 77-182; and here: <https://waynenorthey.com/justice/justice-that-transforms/>, accessed August 23, 2024.

⁶² PREAP, *Handbook*, 11; emphasis in original.

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A tenth perspective today, downstream from the almost 50-year-old document:

Perspective 10: *Abolitionists believe that, like “Kingdom Come,” we must engage for the long-haul; and, if Christian, ever pray the abolitionist supplication: “Thy Kingdom [already but not yet] Come . . .”*

Explains Viviane Saleh-Hanna:

One of the main assumptions of penal abolitionist work is that . . . social life should not and, in fact, cannot be regulated effectively by criminal law and that therefore, the role of the Criminal Justice System should be drastically reduced while other ways of dealing with problematic situations, behaviors and events are being developed and put into practice. Abolitionists regard crime primarily as the result of the social order and are convinced that punishment is not the appropriate reaction (De Haan, 1991: 355).⁶³

In this conviction, *it is crucial to note that penal abolition is not a short-term goal. It is a movement that works toward building a society that will function cohesively and, as a result, will have no use for penal sanctions. While many critics of penal abolition feel that it is a concept that promotes anarchy and fails to consider safety, it is important to assert that penal abolitionists claim the creation of a safe society is their top priority.*

Ruth Morris appropriately summarizes this priority in her statement that abolitionists . . . can play a major part in bringing in a new order of transformation, where the needs of victims, offenders and community take priority over the dead hand of retribution.⁶⁴

*Ergo, Roger Haydon Mitchell’s neologism: Kenarchy!*⁶⁵ This is in fact the undergirding claim of Lee Griffith’s book:

Ultimately, there are not two kingdoms but one — the kingdom of God. . . ‘Freedom to the captives’ is not proclaimed in some other world but in our world. The matter finally comes down to a peculiar question: *Are there prisons in the kingdom of God? And if there are no prisoners there and then, how can we support the imprisonment of people here and now?* For in fact, the kingdom of God is among us here and now.⁶⁶

Ruth Morris in 1995 published *Penal Abolition — The Practical Choice: A Practical Manual on Penal Abolition*. She posits “four key questions,” answers to which make up the content of the book. The questions:

1. What’s wrong with the system we have?
2. Given all these faults, why is it still in place?
3. What do we want instead?
4. Do we have a vision with which to replace it?

How do we get there?

Even if we know what is wrong, and where we want to go, and what is holding us

⁶³ I was unable to locate the reference in brackets; but was able to find this: “Abolition and Crime Control — Willem De Haan.” (see: <https://nomoreprison.blogspot.com/2010/12/abolition-and-crime-control-willem-de.html>, accessed August 23, 2024.)

⁶⁴ West and Morris, *Case*, 44–45, emphasis added.

⁶⁵ See my introduction to it, here (for which the current chapter initially was written): Northey, “Restorative Justice, *Kenarchy*,” <https://waynenorthey.com/2021/03/15/the-kenarchy-journal/>, accessed August 23, 2024.

⁶⁶ Griffith, *Fall*, 28; emphasis added.

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back, can we develop a practical plan for getting from A to B?⁶⁷

While "*living with the question(s)*" is sometimes all one can do, Ruth — true to her ever-practical bent, immense grassroots organizing capabilities, tireless energy, and incisive thinking — turns very concrete in the final two chapters of the book.

Before filling in some detail however, she ends the third last chapter with these powerful observations — as true today as when first penned. She cites two researchers, at Metfors — at the time the most prestigious centre in Ontario for evaluation of the mental condition of those charged with offences:

What is to be feared most is not the random and rare assaults of predatory psychopaths and unwell beings, but the systematic ideological and structural conditions that create these people and throw them into our midst, just as they foster the celebration of war and weaponry, the economic partitioning of the planet into north and south, the industrial poisoning of the biosphere, the co-existence everywhere of outrageous affluence and poverty, the subordination of women and minorities in private and public, in the workplace and homeplace, and the kind of criminogenic Criminal Justice System that makes this society, for virtually everyone, a very dangerous place to live.⁶⁸

Shades of, as seen above, Karl Menninger's *The Crime of Punishment*, and of Dorothy Day's: "*That filthy, rotten system!*" And it could have been written today!

In the final paragraph of the book under the heading "KEEPING THE FAITH," Ruth writes (partly cited above):

A journalist once asked, "Don't you think all this stuff is kind of spitting in the wind right now?" Without hesitation I answered, "No — I believe we are the wind of the future." Abolition is the wind of the future, and our voices are the voices of that future. *The day of retributive justice is passing, and we can play a major part in bringing in a new order of transformation, where the needs of victims, offenders and community take priority over the dead hand of retribution.*⁶⁹

Gordon West also notes that the entire field of criminology arose when criminals were first caged, then closely studied as "specimens," a new phenomenon after the 1790 beginning in Philadelphia of the modern "penitentiary."

Along with this new field of research arose the expansion of crime control at many levels. Criminologists began under the auspices of the power structures of the day, and largely turned a blind eye to the profound human rights violations which however significantly altered their very lens of perception. Howard Zehr's book on Restorative Justice, *Changing Lenses*, captures that idea.⁷⁰

⁶⁷ Morris, *Practical Choice*, 1.

⁶⁸ Quoted in Menzies *et al.*, "Risky," 81.

⁶⁹ Morris, *Practical Choice*, 121; emphasis added.

⁷⁰ Zehr, *Changing*. Again though, while the intuition was right, Zehr never pursued this to its logical/radical end: *penal abolition*. Zehr, when we were MCC colleagues, showed no interest in penal abolition — *a major failure of the very "imagination"* Johann Wolfgang von Goethe (a brilliant 18th/19th-century polymath and scientist: see, https://en.wikipedia.org/wiki/Johann_Wolfgang_von_Goethe, accessed August 23, 2024) *called for!*

Zehr incidentally had no interest either in the work of René Girard.

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This is not unlike an aspect of Johann Wolfgang von Goethe's⁷¹ critique of the Newtonian scientific method,⁷² where to study a natural phenomenon, one kills it and brings it into the laboratory. We read:

Goethe was concerned with the narrowing specialization in science and emphasis on accumulating data in a merely mechanical manner, devoid of human values and human development.⁷³

These new researchers in the emerging field of criminology simply failed to see/acknowledge the brutality of punishment⁷⁴ in the penitentiary's complete physical and mind control of its "*specimens*": hence the axiomatic artificiality of the entire new academic enterprise, together with the ruthless denial of prisoners' human rights.⁷⁵

Charles Dickens⁷⁶ in the 1840s wrote of the penitentiary:

I hold this slow and daily tampering with the mysteries of the brain, to be immeasurably worse than any torture of the body.⁷⁷

Postmodernist Michel Foucault,⁷⁸ as said, echoed this.

West consequently calls on fellow criminologists to divest themselves of their *pro-status-quo* social lenses, and begin truly *seeing* the vast punitive and brutal state apparatus for what it is, one that sucks in and eventually spits out with abandon (too often) ever greater numbers of the poor, minorities, and the disenfranchised.

What most stands in the way of putting on new glasses/lenses? The very state bureaucracies of professional law and order actors, including Law Schools, crime control advocates in particular in the media and by politicians, and convoluted academic explanations of these phenomena.

A classic study illustrating this tragedy is by Johann Hari: *Chasing the Scream: The First and Last Days of the War on Drugs*.⁷⁹ The author is an award-winning British journalist. In the "Introduction" he explains that his research took him across nine countries and thirty thousand miles, and it would last for three years.⁸⁰

At the end of the Introduction, Hari writes:

It turns out that many of our most basic assumptions about this subject are wrong. Drugs are not what we think they are. Drug addiction is not what we have been told it is. The drug war is not what our politicians have sold it as for one hundred years and counting. And there is a very different story out there waiting for us when we are

⁷¹ See: https://en.wikipedia.org/wiki/Johann_Wolfgang_von_Goethe, accessed August 23, 2024.

⁷² See: <https://en.wikipedia.org/wiki/Newtonianism>, accessed August 23, 2024.

⁷³ *Wikipedia*, "Goethean Science," see: https://en.wikipedia.org/wiki/Goethean_science, accessed August 23, 2024.

⁷⁴ Black activist Eldridge Cleaver in *Soul on Ice* wrote:

Behind police[/guard] brutality there is social brutality, economic brutality, and political brutality, 133.

⁷⁵ This was/is much the same reality in Russian Gulags, and in Nazi Concentration Camps; and in vast numbers of prisons worldwide. See on this: Stern, *Sin Against*, 1998.

⁷⁶ See: https://en.wikipedia.org/wiki/Charles_Dickens, accessed August 23, 2024.

⁷⁷ Dickens, *Notes*, 146.

⁷⁸ See: https://en.wikipedia.org/wiki/Michel_Foucault, accessed August 23, 2024.

⁷⁹ Hari, *Chasing*.

⁸⁰ Hari, *Chasing*, 2.

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ready to hear it — one that should leave us thrumming with hope.^{81/82}

In Ruth Morris’ and W. Gordon West’s *The Case for Penal Abolition*,⁸³ for the purposes of this essay, I shall draw from the most salient chapter, “Caging the Poor: The Case Against the Prison System,” by noted philosopher John McMurtry,⁸⁴ who pulls no punches.

Consistent with Gordon West, he writes:

Scientific criminology studies have assumed the prison institution as a given, and then attended to the institutional details of various steps and types of its incarceration regime.⁸⁵

McMurtry claims, then fills in the details, that the prison does not morally reform its keep; does not protect society from violent offenders; is not even a retributive institution — rather something far worse: it serves an

. . . underlying *terrorist function* selecting against the non-violent poor.⁸⁶

A little later he continues:

The retributivist justification of prisons is not only unbalanced. It is also vicious and violent in its own right. It demands as “just” the seizure, torment and forcible imprisonment of millions of people in exchange for nothing remotely similar in violence from them, and in the majority of cases no violence at all. As with past monstrous systems of cruel and systematic oppression, we see how morally blind the conventionalised mind-set can become.⁸⁷

I can attest to this anecdotally. I was strictly warned by my predecessor under MCC *never* to raise the issue of prison abolition, because no one on the Board would accept it — thus possibly creating problems for me.⁸⁸

My MCC counterpart, as seen in the Preface, Howard Zehr, directly critiqued this author’s writings and my commitment to prison abolition, by telling me *one does not attract*

⁸¹ Hari, *Chasing*, 3.

⁸² One could also consult this classic: *The Politics of Heroin: CIA Complicity in the Global Drug Trade*, by noted American historian Alfred McCoy. Of it we read:

The first book to prove CIA and U.S. government complicity in global drug trafficking, *The Politics of Heroin* includes meticulous documentation of dishonesty and dirty dealings at the highest levels from the Cold War until today. Maintaining a global perspective, this ground breaking study details the mechanics of drug trafficking in Asia, Europe, the Middle East, and South and Central America. New chapters detail U.S. involvement in the narcotics trade in Afghanistan and Pakistan before and after the fall of the Taliban, and how U.S. drug policy in Central America and Colombia has increased the global supply of illicit drugs. Amazon, https://www.amazon.ca/Politics-Heroin-Complicity-Global-Trade/dp/1556524838/ref=sr_1_1, accessed August 23, 2024; accessed August 4, 2024.

⁸³ Morris and West, *Case*.

⁸⁴ See: [https://en.wikipedia.org/wiki/John_McMurtry_\(academic\)](https://en.wikipedia.org/wiki/John_McMurtry_(academic)), accessed August 23, 2024.

⁸⁵ McMurtry, “Caging,” 167. He continues in the first endnote:

In general, we can discern in criminology *the structure of not seeing* by which all oppressor institutions are sustained. The statistics and studies of prison systems are regulated by the presupposition of the prison system as a set of scientific facts. Then analytic attention is preoccupied by “security” procedures, classifications, populations and results, *while the dominant pattern of millions of persons being caged for no violent offence never arises as an issue.*, 181; emphasis added.

⁸⁶ McMurtry, “Caging,” 175; emphasis added.

⁸⁷ McMurtry, “Caging,” 176.

⁸⁸ In answer to the reader’s (unasked) question: I ignored that warning. I’m unsure though that any Board member at the time was even paying attention . . . I wonder who does now? . . .

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bees with vinegar . . .

As stated, my longstanding commentary on the “bees” comment has been in accord with Ruth Morris’ *watchword response* to “Restorative Justice,” as promulgated back then by Zehr and others of similar ilk: “*Not Enough!*”⁸⁹ Zehr’s vision was barely in line with Ruth’s: hers was far more trenchant and grander — *and controversial!*

Clearly, Zehr and so many others in the Restorative Justice field *simply do not* (for whatever reasons!) “*see!*”⁹⁰ They do not see the horror, the terror, the utter devastation of a criminal justice system in all its full-scale brutality.

Yet Western systems of justice have always been infected with brutal Empire/colonization and control/“pacification” motifs.

In my retirement years, I have devoted a website⁹¹ to *the Gospel as Counter-Narrative to Empire — the Ultimate Filthy, Rotten System!* There is much on the site in support of such a thesis.

One sees indeed in these two instances “*how morally blind the conventionalised mind-set can become.*”⁹²

Under the heading, “Prisons’ Function in the Annihilation of Humanity,” McMurtry writes:

The primeval function of prisons from the inception has never [in *establishment society*] been recognised. It is the brute right of established ascendant force to *publicly defeat any perceived adversary by a victory of force so total that not a single dimension of autonomous human being remains.*⁹³

He declares that the one overarching goal of prison is
. . . *to break human beings into subjugated animals.*⁹⁴

⁸⁹ See the essay by that title, and in *Justice That Transforms: Volume 1*

(<https://waynenorthey.com/2014/02/26/not-enough-and-international-restorative-justice/>, accessed August 23, 2024).

⁹⁰ The Judeo-Christian abounds in calls to “*see!*” For example, see: Ezekiel 12:2; Ezekiel 40:4; Luke 6:42; Luke 10:23; Romans 11:8; Revelation 3:18, etc.

⁹¹ See: <https://waynenorthey.com/>, accessed August 23, 2024, accessed August 4, 2024.

⁹² McMurtry, “Caging,” 176.

⁹³ McMurtry, “Caging,” 176; emphasis in original.

⁹⁴ McMurtry, “Caging,” 177; emphasis in original. Because I’m on LinkedIn (see:

<https://www.linkedin.com/in/wayne-northey-74a82320/recent-activity/all/>, accessed August 23, 2024), I receive no small amount of “propaganda” (one might say less politely, “*bullshit*”) from a range of contemporary senior Correctional Services of Canada (CSC — https://en.wikipedia.org/wiki/Correctional_Service_of_Canada, accessed August 23, 2024) managers, about the “outstanding” Canadian Prison System.

Yet, except in their bureaucratic dreams, they *do not adhere* to anything close to the United Nations’ “Nelson Mandela Rules” (Standard Minimum Rules for the Treatment of Prisoners see: https://en.wikipedia.org/wiki/Standard_Minimum_Rules_for_the_Treatment_of_Prisoners, accessed August 23, 2024)

Theirs is a daily exercise of getting on with the charade, not unlike Hans Christian Andersen’s Emperor in *The Emperor’s New Clothes: a Fairy Tale*. Except, in the real-life Canadian prison story (as is the case worldwide), *no little boy has ever penetrated the self-applauding, self-serving hoopla of CSC administration officials in their endless parades all the way to the bank, and retirement pensions.*

See my post: “Houses of hate: 03-01-2021.” (<https://waynenorthey.com/2021/03/01/houses-of-hate/>, accessed August 23, 2024) The subtitle reads:

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He concludes:

The prison is an historical anachronism of the absolutism of power, and must be abolished — step by step.⁹⁵

In light of this brief consideration of the unmitigated humanitarian failure of prison, Lee Griffith, adduced above begins his study, *The Fall of the Prison* with:

The gospel is profoundly scandalous, and until we hear at least a whisper of its scandal, we risk not hearing any part of it.⁹⁶

Doubtless part of the scandal is, Christian believers must be significantly at odds with centuries-long Western Criminal Justice convention.

In the chapter, "Prisons and the Bible," the author draws on Karl Barth⁹⁷ to indicate that the gospel does not come after the law; it precedes the law.⁹⁸

We are also taken to the Genesis account of the murder of Abel to see God modelling that, contrary to human understandings of generic justice, *Cain is shown mercy*. And we are told that this sums up God's entire relationship with humankind.

Another significant concept from the Old Testament was the prominence of the idea of "corporate personality." Griffith cites Eduard Schweizer:

Thus, the Hebrew is used to seeing first the nation, the people, mankind, and only afterward the individual member of that nation, people, or mankind. It was Martin Buber who once observed that the Hebrew first sees the woods and only then single trees; whereas we in the Western world would see first the single tree, and only after a process of reflection do we call a thousand trees a wood. We Western people really miss the woods for the trees.⁹⁹

This awareness fits the wondrous African concept of *ubuntu*¹⁰⁰: *a person is a person through other persons*. The classic explication of this in the context of generic Restorative Justice is the book *No Future Without Forgiveness* by Archbishop Desmond Tutu.¹⁰¹

This also, one could argue, is the definitive understanding of our being made in God's image in that:

. . . we like the Trinity are supremely *persons-in-relationship*, and therefore never stand-alones, never disconnected from the Other. As such, the ideal human/person-in-

Dangerous, racist and falling apart. By nearly every metric, the nation's penal system is not just failing, it's making things worse.

In the article, we read:

Canada's prisons are antiquated, inhumane, violent, and expensive. They don't even work. Two decades ago, researchers from the University of New Brunswick did a meta-analysis of 50 studies on incarceration, spanning a half-century. They could not find "any evidence that prison sentences reduce recidivism" and that "prisons should not be used with the expectation of reducing criminal behaviour."

They revisited the study two years later, looking at 100,000 inmates. They found the same result: *Prisons do not reduce crime, they increase it*. (Emphasis added.)

⁹⁵ McMurtry, "Caging," 180.

⁹⁶ Griffith, *Fall*, 1.

⁹⁷ See: https://en.wikipedia.org/wiki/Karl_Barth, accessed August 23, 2024.

⁹⁸ Griffith, *Fall*, 88.

⁹⁹ Schweizer, *Body*, 21.

¹⁰⁰ See: <https://en.wikipedia.org/wiki/Ubuntu>, accessed August 23, 2024.

¹⁰¹ Tutu, *No Future*.

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relationship is one who demonstrates *agape*-love to the neighbour near, and the enemy afar; who endlessly strives to be found in (loving communion with) the Other.

As Griffith begins moving us closer to an overall biblical understanding of justice, he contrasts it with the Western preoccupation of

. . . brute, empirical facts and the application of predetermined laws to those facts. Truth equals facts.¹⁰²

Whereas "*Truth*" biblically — supremely in Christ "*The Truth*" — *is ultimately relational*. Nils Christie¹⁰³ tellingly writes of the legal system by contrast:

Training in law is training in simplification. It is a trained incapacity to look at all values in a situation, and instead to select only the legally relevant ones, that is, those defined by the high priests within the system to be the relevant ones."¹⁰⁴

In other words, Griffith's only "*brute, empirical facts*."

The writer then introduces us to the grand Hebrew term — *tsedeka*; a justice according to God's heart, namely

. . . God's own loving will to set the accused free to enter into covenant again.¹⁰⁵

So,

. . . *tsedeka* stood as a unified view of the various manifestations of righteousness and justice . . . The prophet represented justice by means of interference, by stepping in where he had no business, by intervening on behalf of those who had no voice, and by boldly claiming that the interference was in the name of God.¹⁰⁶

Griffith's further discussion of Hebrew justice is rich and full.

But I shall move on to his understanding of New Testament prison and justice. In biblical "*principalities and powers*" language, prison is ever associated with *the power of death*. He writes:

As such, the problem is not that prisons have failed to forestall violent criminality and violent rampages; the problem is that prisons are *identical in spirit* to the violence and murder that they pretend to combat . . . Whenever we cage people, we are in reality fueling and participating in the same spirit we claim to renounce [in our criminal justice systems].¹⁰⁷

Therefore, when Jesus announced in Luke 4¹⁰⁸ "*freedom to the prisoners*," it broadcasts a renunciation of

. . . the power of death, and it therefore points toward the resurrection itself.¹⁰⁹

¹⁰² Griffith, *Fall*, 94.

¹⁰³ See: https://en.wikipedia.org/wiki/Nils_Christie, accessed August 23, 2024.

¹⁰⁴ Christie, *Limits*, 57.

¹⁰⁵ Griffith, *Fall*, 95.

¹⁰⁶ Griffith, *Fall*, 96.

¹⁰⁷ Griffith, *Fall*, 106.

¹⁰⁸

The Spirit of the Lord is upon me.

Because he has anointed me to preach the gospel to the poor.

He has sent me to proclaim release to the captives,

And recovery of sight to the blind,

To set free those who are downtrodden,

To proclaim the favourable year of the Lord. (Luke 4:18-19)

¹⁰⁹ Griffith, *Fall*, 107.

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So, when Peter was miraculously delivered from prison in the Book of Acts (*the holiest jailbreak ever!*), this is at once enacted parable of "*freedom to the captives,*" and descriptive of what *the Spirit of God wants for all prisoners: their deliverance from the power of death — concomitantly the abolition of prisons.* And as Karl Barth noted, the first true Christian community was composed entirely of executed prisoners — the three criminals on the crosses at Golgotha.¹¹⁰

It should in this light never be lost that Jesus himself indeed was "*numbered with the transgressors.*"¹¹¹ Or, as theologian Mark Lewis Taylor puts it, Jesus was "*the executed God.*"¹¹²

Taylor also quotes the searing words of long-time Black (formerly) death-row prisoner Mumia Abu-Jamal¹¹³:

Isn't it odd that Christendom — that huge body of humankind that claims spiritual descent from the Jewish carpenter of Nazareth — claims to pray to and adore a being who was prisoner of Roman power, an inmate of the empire's death row? That the one it considers the personification of the Creator of the Universe was tortured, humiliated, beaten, and crucified on a barren scrap of land on the imperial periphery, at Golgotha, the place of the skull? That the majority of its adherents strenuously support the state's execution of thousands of imprisoned citizens? That the overwhelming majority of its judges, prosecutors, and lawyers — those who condemn, prosecute, and sell out the condemned — claim to be followers of the fettered, spat-upon, naked God?¹¹⁴

I can only add that, as with my atheist friend, Claire Culhane, of whom I write in "Chapter One: Rediscovering Spiritual Roots: The Judeo-Christian Tradition and Criminal Justice," Abu-Jamal gets it about Jesus! There are millions of Christians alive today, of who Jesus would say:

I tell you the truth, unless you turn from your sins and become like little children, you will never get into the Kingdom of Heaven.¹¹⁵

In this light, it must never be forgotten that Jesus was executed by the *best criminal justice system* of the day (Roman — in the name of good government), and by the *singular monotheistic faith* of the day (Judaism — in the name of good religion).

There is a remarkably rich treasure-trove of reflections on prison abolition throughout the book. Its seams could be mined repeatedly. Near the end the writer declares:

We need to hear the Good News that Jesus is Victor. The prison is fallen. The kingdom of God is in our very midst, and we can no longer pretend that our human warehouses serve good or restrain evil. The power of the prison is the spirit of death, and death itself has been defeated by resurrection. These imprisoned people belong to God, not Caesar. *In the name of Jesus, unlock the prisons!*¹¹⁶

¹¹⁰ Griffith, *Fall*, 118.

¹¹¹ Isaiah 45:12.

¹¹² Taylor, *Executed*.

¹¹³ See: https://en.wikipedia.org/wiki/Mumia_Abu-Jamal, accessed August 23, 2024.

¹¹⁴ Taylor, *Executed*, ix. My book review may be found here: <https://waynenorthey.com/book-review/the-executed-god/>, accessed August 23, 2024, accessed August 4, 2024.

¹¹⁵ Matthew 18:3.

¹¹⁶ Griffith, *Fall*, 227; emphasis added.

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My response is an ever-so-weak — still for me *resounding* — Amen!

Q. *OK. But to play Devil's advocate: we all live in nation-states, and lots of crime gets committed. What do you think is the state to do instead of deploying retribution in response to crime through its Criminal Justice System?*

A. Certainly, one duty of the state is protection of its citizens from harm. And, as far as it goes, that's a good "protection racket" for the state to be in. Obviously, *The Godfather's*¹¹⁷ response is the opposite of the ideal!

Yet, *one must assert*, the (Western) state is too often the *Godfather* enemy of the outcast: the poor, the ethnic-minority, the wrong sexually oriented, etc. In short, the *scapegoat!*

But let me further respond with a little bit of history; then I will circle back to René Girard with a little bit of anthropology.

State versus Community/Biblical Justice

There has been a longstanding dialectic between state and community justice stretching back to the Near East in ancient times.¹¹⁸ The Babylonian Code of Hammurabi¹¹⁹ of about 1754 BC, for instance, codified much community justice; though it came out smelling of state law.

Biblical justice though, tended to transform even state law into *community justice*, with a unique emphasis upon covenant. It was what Martin Luther King Jr.¹²⁰ understood, when he would say, "*The arc of the moral universe is long, but it bends toward justice,*" and held out for the "*beloved community.*"

At its high point, biblical justice and peace *kiss* each other according to Psalm 85:10-12. Listen to the passage up to verse twelve according to *The Voice*, with the transliterated Hebrew added:

¹⁰Unfailing love and truth have met *on their way*;
righteousness (*tsedeq*) and peace have kissed one another.

¹¹Truth will spring from the earth *like a plant*,
and justice (*tsedeq*) will look down from the sky.

¹²Yes, the Eternal will plant goodness *in the earth*,
and our land will yield great abundance.

A similar note is struck in Isaiah 32:15-18:

So it will be until God pours out the Spirit from up above, and *the land comes alive again* — desert to fertile field, fertile field to forest.

¹⁶Then justice (*tsedeq*) and truth will settle in the desert places, and righteousness (*tsedeq*) will infuse the fertile land.

¹⁷Then righteousness (*tsedeq*) will yield peace, and the quiet and confidence that attend righteousness (*tsedeq*) will be present forever.

¹¹⁷ See: https://en.wikipedia.org/wiki/The_Godfather, accessed August 23, 2024.

¹¹⁸ See this book's chapter by a friend and scholar in Peru, Bruno Van der Maat, ANCIENT PRACTICES OF RESTORATIVE JUSTICE.

¹¹⁹ See: https://en.wikipedia.org/wiki/Code_of_Hammurabi, accessed August 23, 2024.

¹²⁰ See: https://en.wikipedia.org/wiki/Martin_Luther_King_Jr, accessed August 23, 2024.

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¹⁸ My people’s homes and hometowns will be filled with peace; *they’ll relax*, safe and secure.

Without doing a Hebrew word study,¹²¹ this kind of justice that as discussed, Dutch criminologist Herman Bianchi in his book, *Justice as Sanctuary* dubbed “*tsedeka* justice,” has a greater antiquity than the Aristotelian ideal, “*Give everyone his due.*” — that was also rife with inequities, if one was not part of (mainly) *élite* males in Greco-Roman society (sound familiar?)— constitutes a central biblical Hebrew concept.

As reminder: the term “*tsedeka*” occurs 157 times throughout the Hebrew Bible, as does the related “*tsedeq*,” found 119 times. The adjective “*tsaddiq*” appears 206 times. 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 to another way of doing humanitarian justice.

Again, 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.¹²²

Whatever else, this kind of justice is *non-punitive, non-retributive*. Bianchi directly contrasts the “*tsedeka*” model with the conventional justice model. “*Give everyone his due*” in the latter leaves the *status quo* unchallenged, rank inequality the norm. Whereas in “*tsedeka*,” there is a constant dynamic of change and equal treatment.

Intention is paramount in the retributive system; *results* — a genuine experience of healing justice — vital in the other. “*A tree is recognized by its fruit . . .*”¹²³ is the Judeo-Christian wisdom about the primacy of the *outcome* of justice.

Bianchi stated elsewhere¹²⁴ that, though the intention of prison reformers in initiating the “American penitentiary experiment” in 1790 was to better the lot of criminals, in fact, the results as earlier said were generally afterwards disastrous, a fact so thoroughly documented (as already seen) as not to need repetition.

Moving on: in the eleventh to thirteenth centuries in Europe as one historian explains:

. . . the state began to replace the individual as the guiding force behind prosecutions. . . With the [eventual] appearance of the state as the sole source of prosecutorial energy, the criminal act could no longer be viewed as an attack by one person on another; *it was now an offence committed against society at large.*¹²⁵

Regina versus the individual in British common law, which Canada and the British Commonwealth inherited; similarly, *we the people* of whatever state *versus the individual* in the U.S., gradually became the new state-centred justice system. I know for instance of a rape victim who fantasizes about calling the Queen (*Regina* versus the accused in Canada) on the anniversary of the rape to ask *how the Queen is doing . . .*

The elements of this enduring move to state law in Western jurisprudence — this

¹²¹ Of which I am *not* capable!

¹²² Bianchi, *Sanctuary*, 48.

¹²³ Matthew 12:33.

¹²⁴ Keynote presentation at ICOPA II, 1985, Amsterdam. I was there. (See also a history written by Ruth Morris: <https://waynenorthey.com/wp-content/uploads/2024/08/ICOPA-History.pdf>, accessed August 23, 2024.)

¹²⁵ See Weisser, *Early*, 100; emphasis added. Compare also Berman, *Law and Revolution*.

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“stealing justice-making from the community,” as Nils Christie dubbed it, were the separation of criminal and civil wrongs; the assumption of the centrality of the state, thus moving all criminality to the public realm; the assumption of harsh punishment as normative — i.e., “pain delivery,” again, as Nils Christie dubbed it as a distinguishing mark of criminal law; a move to formal rationalism and codification of law, displacing informal, relationship-oriented custom law.

In short: the developing Criminal Justice System in the West over the past millennium lost an earlier *peacemaking* orientation to crime; in its place became dominant what the Nixon administration in the 20th century declared to be a “*War on Crime*.” And prison populations thereafter exploded in the United States! For decades, with, at its peak in 2009, over 2.3 million incarcerated, it was the highest *per capita* prison population in the world — still one of the highest. *Land of the Free, indeed!*¹²⁶

Criminologist Michael Jackson¹²⁷ draws on a study by David Garland,¹²⁸ *Punishment and Modern Society: A Study in Social Theory*, to highlight the way in which the raw violence and brutality of state punishment in prison is increasingly “civilized,” not in fact, but through obfuscation and semantics, while the violent repressive reality persists:

The civilizing process in punishment is also apparent in the sanitization of penal practice and penal language. Pain is no longer delivered in brutal, physical form. Corporal punishment has virtually disappeared, to be replaced by more abstract forms of suffering, such as the deprivation of liberty or the removal of financial resources . . .

[T]he aggression and hostility implicit in punishment are concealed and denied by the administrative routines of dispassionate professionals, who see themselves as “running institutions” rather than delivering pain and suffering. Similarly, the language of punishment has been stripped of its plain brutality of meaning and reformulated in euphemistic terms, so that prisons become “correctional facilities,” guards become “officers,” and prisoners become “inmates” or even “residents”, all of which tends to sublimate a rather distasteful activity and render it more tolerable to public and professional sensibilities.¹²⁹

Jackson also observes:

Engaging the scholarship of imprisonment is thus also of critical importance at a time when the public seems to be demanding more, rather than less, use of imprisonment. In the face of declining crime rates, Canada’s incarceration rate continues to rise, ranking among the highest in the world.

¹²⁶ As of 2022, the total U.S. prison population is approximately 1,185,500 individuals, accounting for 96% of the total population under the legal authority of state and federal correctional authorities (Source: Prisons Report Series: Preliminary Data Release, September 20, 2023).

The U.S. incarceration rate is approximately 500 per 100,000 residents, based on the 2020 data (Source: United States incarceration rate, July 15, 2024). This rate has declined from a peak of 754 per 100,000 in 2009, but remains one of the highest in the world.

The U.S. prison population increased by 500% over the last 40 years, primarily due to changes in sentencing law and policy, rather than changes in crime rates (Source: Research — Get the Facts — The Sentencing Project, June 20, 2024).

¹²⁷ See: <https://allard.ubc.ca/about-us/our-people/michael-jackson-gc>, accessed August 23, 2024.

¹²⁸ Garland, *Punishment*.

¹²⁹ Jackson, *Justice Behind*, 28; Garland, *Punishment*, 235.

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Even the appearance that we in Canada may be “soft” on crime in comparison to the United States, the most punitive country in the world, disappears when it comes to rates of locking up young people. In this Canada eclipses even the U.S. Yet there is currently a public clamour for more young people to be tried in adult court and for sentences to be made longer, parole more difficult, and prison regimes more rigorous.

*Politicians seem unable to resist the political benefits perceived to flow from stepping up the war on crime, deploying imprisonment as the principal artillery.*¹³⁰

Already discussed, Nils Christie authored *Crime Control as Industry*,¹³¹ which looked at the American system. When first published in 1994, there was a question mark after the last word: “*Style.*” In subsequent editions, the question mark was removed . . . *The industrialization of punishment had arrived — indeed exploded!*

And Christie, like Karl Menninger in *The Crime of Punishment*, insisted that the true and present danger in Western society were *not* the criminals in their confines or at large, *rather, the crime control industry itself*, that in so many ways holds entire societies hostage behind prison walls of fear and neglect, imitators indeed of the very darkest urges of our collective human condition.

In a brilliant work by friend and retired CBC Ideas producer, David Cayley,¹³² *The Expanding Prison: The Crisis in Crime and Punishment and the Search for Alternatives*, there is a section devoted to Ivan Illich’s¹³³ understanding of prisons as characteristic of religious rituals. Imprisonment is thus, in Illich’s words:

A huge ritual which creates a scapegoat, which we can drive out into the desert, believing that by loading onto that scapegoat all that we experience we’ll get rid of it. . . Prisons are the place in which we can face horror too terrible for us to recognize that we are ourselves immersed in it . . .¹³⁴

Cayley in the same chapter (“Rituals of Repression”) discusses sociologist and philosopher Zygmunt Bauman,¹³⁵ who writes:

. . . the seduction of the majority of market allurements has to be supplemented by the suppression of the other part of the population, of those redundant, imperfect consumers, people who are of no visible utility, no visible use from the point of view of the circulation of commodities . . . On the other hand, you have this waste product of the same development which has to be disposed of. You can consider the criminal system, punishment system, as a sort of sewage pipe or sewage gutters into which the waste products of society are channeled.¹³⁶

¹³⁰ Jackson, *Justice Behind*, 17; italics added.

¹³¹ Christie, *Crime Control*.

¹³² See much on my website: <https://waynenorthey.com/?s=david+cayley>, accessed August 23, 2024.

¹³³ See so much on my website about Ivan Illich (<https://waynenorthey.com/?s=ivan+illich>, accessed August 23, 2024), including *6 recorded 2-hour sessions in a book club* (<https://waynenorthey.com/2022/03/29/ivan-illich-an-intellectual-journey-discussion-group-with-david-cayley/>, accessed August 23, 2024), discussing David’s amazing study: *Ivan Illich: An Intellectual Journey* published in 2022. (<https://www.psupress.org/books/titles/978-0-271-08812-9.html>, accessed August 23, 2024). with David Cayley (see much also about him: <https://waynenorthey.com/?s=david+cayley>, accessed August 23, 2024.)

¹³⁴ Cayley, *Expanding Prison*, 83.

¹³⁵ See: https://en.wikipedia.org/wiki/Zygmunt_Bauman, accessed August 23, 2024.

¹³⁶ Cayley, 75 – 76; Bauman, “Welfare State.”

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Cayley’s entire book is a profound indictment of the “prison industrial complex” and pointer to how else crime might be addressed. It also brings the brilliant thinkers Ivan Illich and René Girard together somewhat in their understanding of *criminals as societal scapegoats*.

David Cayley writes of scapegoats in further discussion of Bauman’s paper, “From Welfare State into Prison”:

A [globalization] order. . . founded on competition, an order whose very existence depends on the incitement of envy, meets its inevitable “other” in the form of “the criminal.”

Indeed, Bauman goes so far as to say that “whatever has been registered in recent years as rising criminality” runs “parallel to the falling of the membership of the communist or other radical parties of ‘alternative order.’” The criminal is the excluded one who has forced his way into the consumer feast

...

Thus, Bauman says, the erosion of the welfare state, the precariousness of the global consumer economy, and the disposability of a certain part of the citizenry all underlie the exuberant growth of prisons in recent years.

The new order generates criminality by sealing off socially approved pathways to prosperity and respect. But it also in a deeper sense *requires* this criminality. The criminal is the “inner demon” of “the fully fledged and all-embracing consumerist society.”

Imprisonment casts this demon out. It allows the good citizens. . . to send their own fears and misgivings away to prison with the offender. Like the ancient scapegoat. . . “the prisoner takes with him aspects of ourselves and our way of life that the main body of citizens prefers to disguise and disregard. Imprisonment in this symbolic sense, accomplishes a double end. It locks up behaviours that may be more characteristic of the workaday world than most would like to admit; and it justifies our sticking to the straight and narrow by making the alternative “too awful to contemplate.”¹³⁷

Now of course, those primarily locked up are poor, from minority groups, on society’s margins: in a word: *disposables*. But as books like Canadian criminologist Thomas Gabor’s *‘Everybody Does It!’: Crime By the Public*,¹³⁸ and like Jeffrey Reiman’s *The Rich Get Richer and the Poor Get Prison*,¹³⁹ demonstrate, *there is largely a myth about the (self-designated) middle and upper “law-abiding classes,”* supposedly dedicated to “law and order.” As Gabor writes in the Preface of his book:

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.¹⁴⁰

“Law-abidingness,” claims Gabor, is only the case for about 5% of inhabitants of our Western democracies. The 90% routinely engage in crime — *when they think nobody is looking!*

¹³⁷ Cayley, *Expanding Prison*, 77 & 79; Bauman, cited in Cayley: “Prison and its alternatives,” 18 (transcript). (<https://static1.squarespace.com/static/542c2af8e4b00b7cfca08972/t/58ffcbc629687f2f43376b54/1493158941534/Prison+2.pdf>, accessed August 23, 2024); and podcast: <https://www.davidcayley.com/podcasts/category/Prison%2Flts+Alternatives>, accessed August 23, 2024.

¹³⁸ Gabor, *‘Everybody Does It!’*

¹³⁹ Reiman, *Rich Get Richer*.

¹⁴⁰ Gabor, *‘Everybody Does It!’*, xiii & xiv.

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The other 5% are in criminal organizations.

David Cayley writes:

The United States has roughly 5 percent of the world's population, and 25 percent of the world's prisoners. In 1975, the combined state and federal prison population of the United States was 300,000 men and women. By 2006, in three decades, it had arisen to 2.3 million, and has remained there more or less since. In other words, as social critic Ivan Illich also warned, the Western state, supremely modelled in the United States, had become in turn a state modelled after the notorious Russian gulag — *in which we are all imprisoned*.¹⁴¹

The third edition of Christie's book was published before September 11, 2001. His forewarnings have been so much more profoundly the case ever since.

Q. You've alluded to Girardian mimetic theory to which you want to turn. But first, please situate Restorative Justice intellectually, historically.

A. Emergence of Restorative Justice: First Criminal Justice Jurisdiction Case of Restorative Justice

Restorative Justice emerged then in *direct challenge to such developments in Western law*; in particular as *an alternative to a decidedly violent and punitive reality*.

In 1974 two youths who one night had been drinking and while driving around had been pulled over by the police and sent home. Getting drunk later on, they set out to take out their frustrations on the small community of Elmira, Ontario, Canada, by doing damage to twenty-two different vehicles, homes and buildings. Several months later the youths pleaded guilty to the charges, and the Judge ordered a Pre-Sentence Report. Two Mennonites (Mark Yantzi and Dave Worth), the former a Probation Officer who wrote the Report, 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 to his awareness unprecedented 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 open to the encounter.

Out of that resultant positive experience arose in 1975 the first ever 'Victim Offender Reconciliation Project (VORP)', later to become known widely as Victim Offender Mediation, or simply Mediation Services. It was also generally acknowledged to be *the first ever expression of Restorative Justice in a Criminal Justice jurisdiction in the Western world*. Though other alternatives to Western punitive justice were also stirring. The ensuing model as said became at least eventually the most replicated in mediation programs worldwide.¹⁴²

There were however indigenous community justice procedures stretching back millennia everywhere in the colonized world. Such approaches informed hugely developments in Canadian Criminal Justice such as Circle Sentencing; in New Zealand, Family Group Conferencing; etc., etc.

The so-called "Elmira Case"¹⁴³ or "Kitchener Experiment" was then a kind of proverbial shot that echoed around the world.

¹⁴¹ Cayley, *Expanding Prison*, 79; emphasis added.

¹⁴² I became its second Director, under Mennonite Central Committee Ontario.

¹⁴³ See Peachey, "Experiment."

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As said, two years later in 1977, I became second Director of that first ever Restorative Justice Program, under Mennonite Central Committee Ontario, that launched me on a wonderful Restorative Justice journey ever since.

Q. So, where did such violent notions of punishment originate and become the norm in Criminal Justice in the West?

A. Ubiquitous Cultural Scapegoating Violence and Criminal Justice

This gets us into sketching some of the intellectual developments of our Western System.

I've discussed already how the formation of Western Criminal Justice Systems were *prima facie* protection rackets akin to the Mob — only with societal legitimation.

When one goes back further and poses the above question generically, even of all cultures past and present, anthropologist René Girard as stated earlier argues that the *founding moment* of every society known to history is in fact *violence*. All human societies then employ a *scapegoat mechanism* in order to contain the violence, in turn to restore social cohesion.

In Western Christian cultures, this form of scapegoating violence eventually was supportive of, and spread by, a highly retributive interpretation (many say wrongly) of Saint Anselm's 11th-century *satisfaction theory* of the *atonement*.¹⁴⁴

Early in the development of Restorative Justice in Canada, my friend, Professor Vern Redekop¹⁴⁵ emeritus professor of St. Paul University, Ottawa Canada, authored a widely approved piece: *Scapegoats, the Bible, and Criminal Justice: Interacting with René Girard*.

In it Redekop poses the question:

Is it possible that what we call a Criminal Justice System is really a scapegoat mechanism?¹⁴⁶

He then analysed Girard's thesis about cultural scapegoat mechanisms found in all historical periods and cultures. He answered the question he posed affirmatively, writing:

It [is] possible to think of the Criminal Justice System as *one gigantic scapegoat mechanism for society*.¹⁴⁷

He explains:

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 on 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*. 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

¹⁴⁴ See Gorringer, *Vengeance*. As well, a wonderful redoing of St. Anselm's classic, *Cur Deus Homo?* (Why God became man), is brilliant Catholic theologian Elizabeth Johnson's *Creation and the Cross: The Mercy of God for a Planet in Peril*.

¹⁴⁵ Retired professor (and friend) Vern Redekop has been working creatively in conflict studies for decades. You may see more of his work, also in relation to René Girard, here: <https://www.cicr-icrc.ca/team/vern-neufeld-redekop>, accessed August 23, 2024, accessed August 23, 2024. (accessed July 22, 2024). There is also a LinkedIn profile: <https://www.linkedin.com/in/vern-neufeld-redekop-b012991b/?originalSubdomain=ca>. (accessed July 22, 2024).

¹⁴⁶ Redekop, *Scapegoats*, 1; emphasis in original.

¹⁴⁷ Redekop, *Scapegoats*, 33; emphasis in original.

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turns out that we in Canada imprison on the order of 3% of criminals . . . Those individual criminals who warrant sensational news coverage, can function as scapegoats themselves.

The case of Bobby Oatway was a classic Canadian example. You may read the paper my friend Chaplain Hugh Kirkegaard and I did on my website, and in *Volume 1* of my publication series, *Justice That Transforms*, entitled: “The Sex Offender as Scapegoat: Vigilante Violence and a Faith Community Response.”¹⁴⁸

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*, scapegoat mechanism to a *peacemaking* way of nonviolence in a bid to break definitively with the endless cycles of recurrent scapegoating violence in Western Criminal Justice.

Q. Thanks Wayne for this Q & A. Please now bring this all to a close.

A. Conclusion

I have used at times the term ‘*Inclusive Justice*’ to capture the deep theology and practice of a *peacemaking* theory of the atonement.

For a millennium, the Judeo-Christian tradition has largely given the West a legacy of violence in response to crime. It need not have, according to its original trajectory and its central protagonist, Jesus.

We need to revisit the powerful dynamic of subversion of all violence in that tradition,¹⁴⁹ in order for society to internalize deeply *the very human story* of *Inclusive Justice*, which is our cosmic destiny. Then we need to connect ourselves to it existentially with all the will, energy, and imagination we can muster.

And one day, according to the biblical image of the *Peaceable Kingdom*,

*The wolf will live with the lamb, the leopard will lie down with the goat,
the calf and the lion and the yearling together; and a little child will lead them. . . They
will neither harm nor destroy on all my holy mountain, for
the earth will be full of the knowledge of the LORD as the waters cover the sea.*¹⁵⁰

Transformative, Inclusive Justice that never excludes, and the promise of the *Peaceable Kingdom* are the (*pace* Justice Holmes’ “rules game”) *endgame* of Restorative Justice — hence the “*only game in town*,” to which I say *resoundingly*:

¹⁴⁸ Northey, *Justice That Transforms*: Volume 1, 159-175. Also online here:

<https://waynenorthey.com/2021/11/16/the-sex-offender-as-scapegoat-2/>, accessed August 23, 2024.; and surprisingly still here (<https://religion.emory.edu/faculty/smith/vr/kirkegaard.html>, accessed August 23, 2024), where Hugh and I co-presented at a COV&R Conference (<https://religion.emory.edu/faculty/smith/vr/schedule.html>, accessed August 23, 2024), held at Emory University in 1999.

¹⁴⁹ I did a small book once, to be found on this post: “Christianity and the Subversion of Just About Everything!” (See: <https://waynenorthey.com/2015/02/28/christianity-and-the-subversion-of-just-about-everything/>, accessed August 23, 2024.)

¹⁵⁰ Isaiah 11:6 - 9.

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Amen!

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¹⁵¹ The entire book with links is available online: www.justicebehindthewalls.net, accessed August 23, 2024.

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