

## **Restorative Justice Vision and Spirituality**

**ARPA Presentation, Langley Canadian Reformed Church, March 5, 2005**

by Wayne Northey

### *Introduction*

I have been tasked to give you a little bit of a taste of what Restorative Justice is. From the first time the term was used in the professional literature just 30 years ago, to today, there has been an enormous worldwide embrace of Restorative Justice in many criminal justice jurisdictions, especially Western. Like other such movements, there is also enormous variety in expression of what is Restorative Justice.

A simple way to express it is: *Restorative Justice is a peacemaking rather than a warmaking response to crime, whereby ideally all may bring as much closure as possible to the criminal act, with the offender/perpetrator fulfilling obligations to “make it right”, and the victim and impacted community able to move on.* In *The Little Book of Restorative Justice*, Howard Zehr, a leading theorist, writes: “Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible (Zehr, 2002, p. 37).”

A significant impetus to its beginnings in current Western criminal justice jurisdictions was the so-called “Elmira Case”, which is also written about by one of the delinquents, Russell Kelly, in the packets handed out.

I will tell that story first, then look briefly at the bigger picture through the lenses of history but mainly theology, then conclude with an imperfect restorative justice story from our own ministry, M2/W2. I’ll leave it to MP Mark Warawa to wrestle with the political implications. (Mark was also a volunteer in the past with our agency.) I also understand we will hear further restorative stories from our other guest, Tony Togeeretz.

### *The Elmira Case*

In 1974 two youths who had been drinking and had been “talked to” by the police already, took out their frustrations on the small community of Elmira, Ontario, by doing damage to twenty-two different victims’ property. Several months later the youths pleaded guilty to the charges, and Judge Gordon McConnell in Kitchener ordered a Pre-Sentence Report. Mark Yantzi, the Mennonite Probation Officer writing up the report, discussed the case with the local Mennonite Central Committee court volunteer, Dave Worth. Both had been reading recent publications by the Law Reform Commission of Canada in which it had been stated that reconciliation played an important role in criminal justice. They also knew that reconciliation was the central concept of their Christian faith.

The youths eventually met with all their victims, in an unprecedented move in Western criminal justice. This incident, known in the Restorative Justice movement as “The Elmira Case”<sup>1</sup>, became a kind of proverbial shot that echoed in a gathering “Restorative Justice” movement around the world.

Right here in Langley, this approach to justice was applied by Fraser Region Community Justice Initiatives Association (C.J.I.) to the most serious and violent crimes in the criminal code of Canada. For over 15 years, the “Victim Offender Mediation Program” has offered “therapeutic dialogue” for victims and perpetrators. It is renowned in international criminal justice circles for its contribution to Restorative Justice in peacemaking and restorative initiatives in the most serious criminal cases. I know that our MP, Mark Warawa, recently met with some staff and board from this program. (Incidentally, Mark was also a former volunteer with our agency.) C.J.I. won two years ago the top Canadian award for Restorative Justice.

Around the globe, several Restorative Justice Initiatives have taken root. You have been given a packet of last year’s Correctional Services Canada publication for Restorative Justice Week in November. Many of these initiatives are described there.

A brief sampling:

- There are hundreds of Victim Offender Mediation Programs operating around the world. Victims and offenders through a mediator or mediators help bring closure to the crime through facilitated dialogue between one another.
- There are hundreds of Community Conferencing programs, developed first in New Zealand in 1989 in what was called “Family Group Conferencing”, where victims, offenders, significant family members and other supporters under supervision of a professional, often police in North America, work towards making right the crime.
- Peacemaking Circles are deeply rooted in aboriginal spirituality understandings. They address not only the immediate crime issues, but underlying community issues too, to rebuild community where crime has broken it.
- Surrogate Victim/Offender Restorative Justice Dialogue allows victims and offenders to encounter one another, but not related by the same crime. This may happen when the other encounter is not possible, or in preparing for the actual victims and offenders of the crime to meet.
- Our agency operates together with Catholic Charities a Fraser Valley Circles of Support and Accountability Program that works with high risk sex offenders returning to the community on what is called a “warrant expiry” – when the prisoner has no further correctional controls upon him. Often the police petition the court for some restrictions based upon Section 810 of the Criminal Code. A group of usually 4 – 7 volunteers commits to work with the ex-prisoner weekly for at least a year, offering support, holding him accountable. For 10 years, this program across Canada has been highly effective in preventing repeat sexual offences. WE NEED VOLUNTEERS, by the way!

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<sup>1</sup> See a fuller account in Dean Peachey’s “The Kitchener Experiment” (1989).

## *Christian Violence in Church History*

Something happened to Christian spirituality between the Cross, originally *premier symbol of resistance to and negation of abusive state power*, and the Cross, throughout most of Christian history, *supreme upholder of state violence*. In honouring and worshipping an executed criminal, early Christians became irksome dissidents to the dominant mythology of culturally and state-sanctioned scapegoating violence.

This past half-century, a large body of biblical scholarship<sup>2</sup> upon rereading the founding texts has rediscovered the peacemaking thrust of the Gospels, especially in the Sermon on the Mount, the early church's primary ethical catechism. One theologian writes that there is "a great irony of history that the cross, symbol of the ultimate triumph of peaceful means to peaceful ends, has been used as a standard in battle (Anderson, 1992, p. 104)."

Reformed theologian Hans Boersma, in a recent publication, *Violence, Hospitality, and the Cross* (2004), argues repeatedly in an amazingly erudite and compelling treatise, that violence in Kingdom Come will be no more, but it is unfortunately part of Christian reality today. He writes: "God's involvement in the cross seems to imply violence, and our imitation of Christ's self-sacrifice may also lend itself to the perpetuation of violence (Boersma, 2004, p. 119)." Yet again: "I argue that hospitality cannot be practiced without violence in the world as we know it; that the hospitality of the cross therefore necessarily involves (penal) violence... (*ibid*, p. 154)"

His definition of violence, however, seems on the order of prevention, such as physically stopping a child from crossing the street to prevent greater harm. Yet he permits "good violence" including war, where invariably, innocents are killed and maimed, a very high percentage since the advent of aerial bombing. Hans never really explains in real world terms what he means by "good violence": how much killing the state may do *Christianly* in warfare; whether the state should do retaliatory violence to criminals; whether, if the death penalty is theologically legitimate, the state should carry it out and for what crimes, etc. Hans never addresses directly Jesus' command: "Love your enemies". Nor does he ever explain how our love of God is not compromised when we fail to likewise act out concretely neighbour and enemy love.

Theologian Lee Griffith in *The War on Terror and the Terror of God* (2002) argues that the terror of God is none other than God's peacemaking message of the Cross. He asks: "What would this mean if it were true that we love God only as much as the person we love least? Would it not mean that, when we have finally won the victory in our war on terrorism, when we have finally managed to exterminate all the thugs and Hitlers and terrorists, we will have expressed nothing so much as our total confidence in the death of God? (Griffith, 2002, p. 263)"

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<sup>2</sup> See "Notes" in Anderson, 1992, for examples.

This is the heart of Griffith's sustained thesis that "the biblical concept of 'the terror of God' stands as a renunciation of all violence – and of death itself (inside front jacket cover)." This of course seems an impossible dream – like Kingdom Come!

On the other hand, one must only think of the current "War on Terror" waged by the United States, even in Christian terms from the mouths of President George Bush or Secretary of State Condoleezza Rice. May such a war, one must ask Hans Boersma, legitimately claim over 100,000 civilian deaths<sup>3</sup>, and still be "good violence"? May the United States outside China and Russia carry out the death penalty against the greatest number of criminals, many of whom, it is discovered post-execution, are innocent, and this still be "good violence?"

So we are caught as Christians right at the point of biblical interpretation and application itself, when it comes to state violence in response to modern-day terrorism or yesteryear state enemies, domestic and foreign.

There is an incredible amount of endorsement of state violence in Western church history. Thankfully, there is also lots of good news throughout. Hindsight is of course 20/20. It is always easy to critique other eras through lessons painfully learned from humanity's passing through that history. We should be very careful about throwing stones, we who live in incredibly violent times ourselves...

The 12<sup>th</sup> and 13<sup>th</sup> century Crusades that killed thousands of Muslim "infidels"; the multi-century Middle Ages Inquisition that killed thousands of Jews, "pagans", and witches; the 16<sup>th</sup> century Protestant Reformation that killed thousands of Anabaptists, and so on, do not make for pretty history.

A theologian writes: "One reason that the world finds the New Testament's message of peacemaking and love of enemies incredible is that the church is so massively faithless. On the question of violence, the church is deeply compromised and committed to nationalism, violence, and idolatry (Hays, 1996, p. 343)."

If the essence of the "law" - of how we should live -, according to Jesus is *justice, mercy and faithfulness* (Matthew 23:23), the Western church indeed stands guilty of injustice, mercilessness, and faithlessness on the issue of violence.

*More Church History: The Atonement and Western Penal Law*<sup>4</sup>

There is one additional consideration: "the satisfaction theory" of the atonement, which took root from the 11<sup>th</sup> century on, under the influence of the treatise, *Cur Deus Homo* (*Why God Became Man*) by Anselm of Canterbury. There have been several discernible views of the atonement in the history of the church (Bellinger, 2001, pp. 134ff), of which the "satisfaction theory" or theories, has been the most dominant in Western history since

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<sup>3</sup> Herbert, 2004.

<sup>4</sup> Throughout this section, I am drawing fairly extensively upon Allard and Northey (2001).

the 11th century.

“[These] theories may be said to have originated with Anselm, who saw sin as dishonor to the majesty of God. On the cross the God-man rendered satisfaction for this dishonour [through blood-sacrifice]. Along similar lines the Reformers thought that Christ paid the penalty sinners incurred when they broke God’s law (Morris, 1974, p. 83).” Hans Boersma, incidentally, favours a “recapitulation theory” first developed by ancient Church Father Irenaeus.

Explains one author: “In *Cur Deus Homo* Anselm’s theology is a theology of law.

“Before the time of Anselm (and in the Eastern Church still) it would have been considered wrong to analyze God’s justice in this way. It would have been said, first, that ...the whole exercise of a theology of law is a contradiction in terms. And second, it would have been said that it is not only, and not primarily, divine justice that establishes our relationship with God but also, and primarily, his grace and his mercy; that is his grace and mercy, and not only his justice, which explains the crucifixion, since by it mankind was ransomed from the power of the devil and the demons of death – the very power which had procured the slaying of Jesus in the first place but which then itself was finally conquered through the resurrection (Berman, 1983/1997, p. 180).”

Although Anselm’s theology of ‘satisfaction’ was never proclaimed as the official doctrine of the Christian church, it was widely accepted both in Catholicism and Protestantism and was to have negative effects when applied to the criminal justice system.

“The main justification [for ‘new concepts of sin and punishment based on the doctrine of the atonement’] given by Anselm and by his successors in Western theology was the concept of justice itself. Justice required that **every sin (crime) be paid for by temporal suffering**; that the suffering, the penalty, be appropriate to the sinful act; and that it vindicate (“avenge”) the particular law that was violated (Berman, 1983/1997, p. 183. Italics in original; boldface mine).”

Over the differing voices of many other Western Christian interpreters, Anselm’s voice remained the strongest until well into the twentieth century.

“The penal consequences of this doctrine were grim indeed. As it entered the cultural bloodstream, was imaged in crucifixions, painted over church chancels, recited at each celebration of the Eucharist, or hymned, so it created its own structure of affect one in which earthly punishment was demanded because God himself had demanded the death of his Son (Gorringer, 1996, pp. 102 & 103).” By the birth of the modern prison in the late eighteenth century, and persisting to the present, what emerged was a penal system dedicated to a “mysticism of pain” - *with no redemption*. (By contrast the Stephen King novel that led to the movie, *The Shawshank Redemption*, is so gripping!)

## *Beyond Retribution*

In response to this history, *Beyond Retribution: A New Testament Vision for Justice, Crime, and Punishment* (Marshall, 2001), is instance of rereading the Judeo-Christian founding texts to provide a basis, not for continued scapegoating violence in the modern Western secular state (which still has intact many trappings of a bygone religious era!<sup>5</sup>), but for a profound redirection of traditional interpretation of those texts away from violence, “beyond retribution”, towards, biblically, *shalom*, reconciliation and forgiveness.<sup>6</sup> This is in keeping with Hans Boersma’s endorsement, “The absolute non-violence of the eschaton [the age to come] – [God’s] pure hospitality – is always calling us to implement a hospitality that reduces violence as much as possible and promotes the kingdom of eternal justice and peace (Boersma, 2004, p. 50).”

Marshall states at the outset that his “premise is that the first Christians experienced in Christ and lived out in their faith communities an understanding of justice as a power that heals, restores, and reconciles rather than hurts, punishes, and kills, and that this reality ought to shape and direct a Christian contribution to the criminal justice debate today (Marshall, 2001, p. 33).”

Marshall further challenges directly the longstanding dominance of atonement as “satisfaction” and “penal substitution”. He writes: “The logic of the cross actually confounds the principle of retributive justice, for salvation is achieved not by the offender compensating for his crimes by suffering, but by the victim, the one offended against, suffering vicariously on behalf of the offended – a radical inversion of the *lex talionis* [law of retaliation] (*ibid*, pp. 65 & 66).” He sees Jesus as embodiment of God’s justice, and his way as non-retaliation.

Marshall considers also the “*Purpose and Ethics of Punishment*”, and after discussing all the main theories holds out for the biblical notion of “Restorative Punishment”, by which he means “*Punishment as the Pain of Taking Responsibility*”. He retains the word “punishment”, but first empties it of all its punitive thrust, then reinvigorates it with an accountability/responsibility payload.

“Restoration, not retribution, is the hallmark of God’s justice and is God’s final word in history (*ibid*, p. 199).”, Marshall claims.

Not surprisingly, Marshall also finds no biblical mandate for the death penalty.

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<sup>5</sup> In *Scapegoats, the Bible, and Criminal Justice: Interacting with René Girard* (1993), Vern Redekop asks: “Is it possible that what we call a criminal justice system is really a scapegoat mechanism?” His response is: “In a secular democratic society, nothing is as sacred as the law code and the justice system which enforces it. The buildings in which laws are made are the most elaborate and the courts in which decisions are made about points of law are the most stately. Formality, uniforms, and respect surround the agents of law.” He concludes: “It is possible to think of the criminal justice system as one gigantic scapegoat mechanism for society (pp. 1, 16, and 33).”, and illustrates convincingly.

<sup>6</sup> A similar orientation is found in the publication *The Spiritual Roots of Restorative Justice* (Hadley, 2001), to which this writer co-contributed the chapter on Christianity. It is also reflected in *God’s Just Vengeance* (Gorringer, 1996). It is germane to point out that the impetus for these publications was the already established tradition from the Christian faith community of rereading its sacred texts in a nonsacrificial way, in the direction of Restorative Justice.

“Capital punishment is incompatible with a gospel of redemption and reconciliation (p. 253).”, he succinctly sums up.

In his final section he presents “*Forgiveness as the Consummation of Justice*”. Marshall discusses the South African Truth and Reconciliation Commission headed by Archbishop Desmond Tutu as illustrative of the attempt at a state-wide process and application of forgiveness and accountability in post-apartheid South Africa. Marshall quotes Tutu saying, “[W]ithout forgiveness, there is no future (*ibid*, p. 283).”<sup>7</sup> This conclusion is similarly argued on a macro political level persuasively in Donald Shriver’s *An Ethic for Enemies: Forgiveness in Politics* (1995). Shriver explains that “Forgive and forget” gives way to “Remember, forgive, and be free.”

So instead of a merciful and compassionate God as revealed in Jesus the Christ, the Christian “god” became a severe judge (for the past millennium *the* dominant Western image of God) bent on punishment and almost literally ‘blood-thirsty’. Christians who used the Cross to scapegoat the Jews and pagans on a grand scale, to lead Crusades and persecute others until blood repeatedly ran in the streets, to destroy their fellow Reformationists, the Anabaptists by the thousands in surrounding rivers and lakes, and so on, reversed what the Cross had originally stood for in Jesus’ death and resurrection.

The modern prison was to drastically grow during the 19<sup>th</sup> century as a new more humane form of punishment, but the punitive attitude of the church remained alive and well in the modern “penitentiary” – originally designed religiously to make the criminal “penitent”. With the birth of the modern penitentiary in the late 18<sup>th</sup> century, argues Michel Foucault, violent punishment merely shifted from the body to now the *very soul* of the wrongdoer (Foucault, 1977), however well-meaning was the intent. Those psychological wounds often proved, and prove still, impossible to heal.

Timothy Gorringer writes: “For those who hope to find in the witness of the church some signs of the work of the Holy Spirit in an examination of the role of the church in the penal debates of the nineteenth century is depressing indeed. From start to finish the bishops proved staunch supporters of flogging and hanging (Gorringer, 1996, p. 211)”. It has taken until the latter half of the 20<sup>th</sup> century for the church to come alive to its own biblical moorings in redemption, reconciliation, and restorative justice.

Over the centuries, in the area of criminal justice, the Christian church moved from a theology of grace and servanthood to a theology of law and punishment. Will the Restorative Justice treasure remain deeply buried or will the Christian church have the courage to raise a consistent prophetic voice within the criminal justice system today? A decisive engagement continues to be urgently needed worldwide.

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<sup>7</sup> Almost title of Tutu’s magisterial reflection on Restorative Justice (2000), through the story of the Truth and Reconciliation Commission, which Tutu headed from its inception. It is reviewed in *Catholic New Times* (Northey, 2002).

### *Conclusion: M2/W2 and Restorative Justice*

In a moment, I will recount a final story of restorative justice, though imperfect, that comes from our agency's files. M2/W2 Association for 38 years has recruited, trained, and supervised volunteers to work with men and women in prison, and when they are released into the community. We say we do "Restorative Christian Ministries". We also operate a Parent to Parent Program in Chilliwack, targeting moms of kids in the 0 to 5 year range. And we, as mentioned, work with Catholic Charities on Circles of Support and Accountability. There is a display and literature at the back.

### **The Story of Bobby**

Bobby committed terrible crimes of incest over 25 years ago. He served 15 years in prison for those crimes, becoming involved in our program early on. Upon initially being paroled, he was rejected first by the city of Prince George, then by Toronto. In each case, a huge outcry forced him to leave for his own personal safety. John Kastner produced a video about this for CBC entitled, "Hunting Bobby Oatway"<sup>8</sup>.

Bobby was eventually forced to seek haven back in jail. Because of the video, one attempt was made on his life there. He lived in fear of return to society.

In June, 1999, he was released on a "warrant expiry", meaning there were no correctional controls on him. After his release, the police secured a court-ordered set of conditions. He went to live in the interior of BC.

On July 11, a Town Meeting that turned ugly forced Bobby out again.

No one was interested to know that Bobby in prison had taken every treatment course possible, then himself had paid for further counselling on the outside. No one wanted to hear that he was deeply remorseful for his past crimes, and personally was committed NEVER AGAIN to reoffend.

Bobby subsequently became part of a community-based "Circle of Support and Accountability", with full endorsement and engagement of the local police and other authorities. He has lived as a crime-free, gainfully employed, and functioning member of society to this day.

This is partial Restorative Justice, and a striving towards Kingdom Come. Though it is only partial, since his victims are left wounded and unhealed.

We began with "The Elmira Case", considered some history and at length some theology, and concluded with a somewhat restorative justice story about Bobby.

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<sup>8</sup> There is article, "The Sex Offender as Scapegoat", reflecting on this story by Kirkegaard and Northey (1999).



Jesus taught: “Blessed are the peacemakers”. (Matthew 5:9) James wrote tersely: “Peacemakers who sow in peace raise a harvest of righteousness.” (James 3:18) One could paraphrase: “Peacemakers who sow in peace raise a harvest of restorative justice.” We might then hear Jesus’ words at the end of the Good Samaritan Story in Luke 10: “Go and do likewise.”

AMEN.

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