

## Restorative Justice: *Peacemaking Not Warmaking*; Transformative Justice: *Penal Abolitionism Not Prison Reform*

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**NOTE:** *Appreciation goes to Dr. Brad Jersak, friend, encourager, and 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.”<sup>1</sup> What follows is a reworking of that material and addition of new. I decided to retain the Q & A format.*

**Editor’s note:** As one of the peer reviewers put it, “This reads like a polemic and I am sure Wayne intends it to be. But grounded in Wayne’s own groundbreaking practice, it is theologically and philosophically literate and coherent, citing the likes of Cavanaugh, Ward, Girard, Wink, Foucault, and Mitchell. I am not sure the argument needs the polemic flourishes – it is powerfully convincing without them.” Having made an initial attempt to edit out these “flourishes”, we eventually decided to leave them in as an embodied example of a life-long academic activist’s anguished cry!

**Q. 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.”<sup>2</sup> 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).**

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

1. It’s an obvious truism that criminal lawmaking and enforcement are function not of innate

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<sup>1</sup> See: Wayne Northey, “Restorative Justice: Peacemaking Not Warmaking”, interview by Brad Jersak, (IRPJ.org Institute for Religion, Peace & Justice, [https://www.clarion-journal.com/clarion\\_journal\\_of\\_spirit/2020/10/restorative-justice-peacemaking-not-war-making-wayne-northey-interview-host-brad-jersak.html](https://www.clarion-journal.com/clarion_journal_of_spirit/2020/10/restorative-justice-peacemaking-not-war-making-wayne-northey-interview-host-brad-jersak.html)) .

<sup>2</sup> William Cavanaugh, “A FIRE STRONG ENOUGH TO CONSUME THE HOUSE: THE WARS OF RELIGION AND THE RISE OF THE STATE, in *Modern Theology* 11:4 (October, 1995), 413.

universal moral principles—kinds of Kantian moral categorical imperatives—but as the late Norwegian criminologist Nils Christie 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, are generated by oligarchs on their own behalf: economically, legally, socially, etc. Professor Vern Redekop, drawing on anthropologist René Girard, refers to such systems as societal *scapegoat mechanisms* by which the select few are prosecuted/persecuted on behalf of the many.<sup>3</sup> 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 universal moral principles and human rights—such as in the 1948 *United Nations’ Declaration of Human Rights*. The legacy of this vicious reality has confronted us—*worldwide!*—with renewed vigor in enormous groundswells of protest ever since the murder of George Floyd 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 he helped found, an annual *Louis Riel Day* public holiday.

A politician touting “Law and Order” begs the questions: *Whose Law? What Oder(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 Taylor has an arresting title that puts the point home: *Democracy May Not Exist, but We’ll Miss It When It’s Gone*<sup>4</sup>.

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<sup>3</sup> Vern Redekop, “A Post-Genocidal Justice of Blessing as an Alternative to a Justice of Violence: The Case of Rwanda”, Barry Hart, Editor. In *Peacebuilding in Traumatized Societies*, (Lanham: University Press of America, 2008).

<sup>4</sup> Astra Taylor, *Democracy May Not Exist, but We’ll Miss It When It’s Gone*. (New York: Metropolitan Books, 2020).  
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2. Noted 20<sup>th</sup>-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.”<sup>5</sup>

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.”<sup>6</sup>

Not unrelated, famed psychiatrist Karl Menninger in 1966 wrote *The Crime of Punishment*,<sup>7</sup> a book that has stood the test of time—claiming punishment in the United States is hugely 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*.<sup>8</sup>

In 1993, activist, author, and theologian Lee Griffith published *The Fall of the Prison: Biblical Perspectives on Prison Abolition*. 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.”<sup>9</sup> 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.”<sup>10</sup> I shall return at length to Griffith’s theme, one seldom raised in the Restorative Justice field.

## **Q. Your university education was in French and German literature, on your way to**

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<sup>5</sup> Charles Tilly, “War Making and State Making as Organized Crime,” In *Bringing the State Back In*, Peter Evans, Dietrich Rueschemeyer, and Theda Skocpol, Eds, (Cambridge: Cambridge University Press, 1985), 169, 170.

<sup>6</sup> Tilly, 170.

<sup>7</sup> Karl Menninger, *The Crime of Punishment*. (New York: Penguin, 1966/1977).

<sup>8</sup> Jeffrey Reiman, *The Rich Get Richer and the Poor Get Prison*. (New York: Routledge, 2016).

<sup>9</sup> Lee Griffith, *The Fall of the Prison: Biblical Reflections on Prison Abolition*. (Eugene: Wipf and Stock, 1999), 175.

<sup>10</sup> Griffith, 176.

**becoming a high school languages teacher. After a rerouting and life-changing experience in West Berlin, Germany, upon completion of an undergraduate degree, you returned to Canada and completed a Masters in Theological Studies at Regent College, Vancouver. Nothing in those studies pointed to a subsequent 40-year career in the Canadian Criminal Justice System, and continued involvement since retirement seven years ago. A “funny thing must have happened on the way to the forum” as it were. What altered your life course?**

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 (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 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;<sup>11</sup> 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?**

When I first was merging into what became the new Restorative Justice field, after having

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<sup>11</sup> See Walter Wink, *The Powers Trilogy:-Naming the Powers: The Language of Power in the New Testament*, (Philadelphia: Fortress Press, 1984); *Unmasking the Powers: The Invisible Forces That Determine Human Existence*, (Philadelphia: Fortress Press, 1986); *Engaging the Powers: Discernment and Resistance in a World of Domination*, (Minneapolis: Fortress Press, 1992).

become almost a half century ago—in 1974—while at Regent College, a volunteer visitor of prisoners 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 nations modelled Systems—amazingly!—after the tragically broken American System. 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 all sense of culpability of the other. My wife Esther works in an End Abuse Program<sup>12</sup> that refers to women *not* as "victims of abuse," *rather* as *women in abusive relationships*. The difference though subtle leaps out!<sup>13</sup>

### **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."<sup>14</sup>

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.

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 a century ago once responded to a

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<sup>12</sup> Please see: <https://mcccanada.ca/learn/what/categories/abuse-response-prevention>. Together we also facilitate "Home Improvement" Groups of men responsible for the abuse.

<sup>13</sup> 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!

<sup>14</sup> See Jerry Armenic, *Victims, The Orphans of Justice, Toronto* (McClelland and Stewart-Bantam, 1984), who first coined the phrase.

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."<sup>15</sup> 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?*

All the essentially *human dimensions* of Western jurisprudence were over the centuries squeezed out in favour of rules and gamesmanship. And hugely ironic, *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, etc.—are often 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, *inhumane*.

A former longstanding head Crown Attorney in Ottawa, André Berzins, 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.<sup>16</sup>

### **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 forty-five years 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*. To repeat: psychiatrist Karl Menninger's 1966 book and title *The Crime of Punishment* was a broadly apt 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

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<sup>15</sup> Michael Herz, "Do Justice! Variations of a Thrice-Told Tale." (Virginia Law Review 82, no. 1, 1996), 111-61. There are variations to the quote and story as you may see, also to interpretations. The point for my purpose in the story—that *justice is a "game"*—is however undisputed.

<sup>16</sup> More on this below.

was essentially “pain-law”, concerned primarily with “pain delivery” just like “milk delivery,” to which his response was: *Dreadful!*<sup>17</sup>

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 precept<sup>18</sup>), had made justice predominantly “*tit for tat*,” that is: *retributive* and *punitive: societal vengeance strictly exacted like Shakespeare’s “pound of flesh.”* 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 wrong . . .

### **Community and Conflict/Doing Justice Stolen**

*Third*, the impacted community needed to take back its own conflict—and justice-doing. *Not vigilante justice* and worse like the “Proud Boys” we’ve been hearing of, 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 puts 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 Jail was in part repurposed to be the first ever *penitentiary* in 1790, 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.* In the

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<sup>17</sup> Nils Christie, *Limits to Pain*, (Oxford: Martin Robertson, 1982), 15, 16 and 18.

<sup>18</sup> I have spent a 45-year career writing and presenting about this, and continue in retirement. Please see the recent series: Wayne Northey *Justice That Transforms Volume One* (Eugene, Oregon: Wipf and Stock, 2000); *Justice That Transforms Volume Two* (San Bernardino: Kindle Direct Publishing, 2018); *Justice That Transforms Volume Three* (San Bernardino: Kindle Direct Publishing, 2018).

United States, as detailed by Nils Christie, crime control became a *pervasive industry*,<sup>19</sup> whose human “products” were consequently deeply psychologically scarred. The classic book on this was by postmodernist Michel Foucault, first published in French in 1975; in English that same year as: *Discipline and Punish: The Birth of the Prison*.

A longstanding colleague and friend Ruth Morris, organized the first International Conference on Prison Abolition (ICOPA) 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.) I was further 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 published the final chapter in the Conference’s proceedings.<sup>20</sup> It is the opening chapter in the first Volume of my *Justice That Transforms*.<sup>21</sup>

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 wrong-doings, questioning their basics on ‘legalized’ vengeance. Instead we advocate the possibilities of ‘healing justice.’”<sup>22</sup>

Though Ruth was a committed Quaker Christian and creative scholar, it was left to Lee Griffith 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

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<sup>19</sup> Nils Christie, *Crime Control as Industry: Towards GULAGS, Western Style* (London: Routledge, 1995).

<sup>20</sup> Herman Bianchi, and René van Swaaningen, Editors, *Abolitionism: Towards A Non-Repressive Approach to Crime* (Amsterdam: Free University Press, 1986).

<sup>21</sup> Northey, 1-13.

<sup>22</sup> Gordon W. West and Ruth Morris Eds. *The Case for Penal Abolition* (Toronto: Canadian Scholars’ Inc., 2000), 4. *The Kenarchy Journal* (2021), 2, 73-102 Copyright © 2021



“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 alike.”<sup>23</sup>

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

An early publication in my Criminal Justice journey was: *Instead of Prisons: A Handbook for Abolitionists* (1976). One of the organizations listed in that book was what I became second director of in 1977 under Mennonite Central Committee Canada: Victim/Offender Reconciliation Program (VORP), begun in 1975. This paper as mentioned points well beyond those early fitful starts to something immeasurably grander and more encompassing. As I write in *Volume One*: “What is needed, Amos (5:24), Dorothy Day, Ruth Morris, Martin Luther King Jr. and a host of prophetic saints thunderously call for, is rigorously radical *transformation* of that *dirty rotten System!* Zehr’s and others’ approach to Restorative Justice early on lacked the radical intellectual rigor the best of the Christian (and beyond—think Gandhi) prophetic tradition exhibits. What is wanted is for starters a ‘ . . . *who-can-but-prophecy?*—Amos’ measured diatribe against the System, such as captured brilliantly in Canadian singer Bruce Cockburn’s ‘Lovers in a Dangerous Time’: ‘*gotta kick at the darkness 'til it bleeds daylight.*’”<sup>24</sup> *Justice that indeed transforms . . .*

While almost 50 years old, the *Handbook* ... 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-

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<sup>23</sup> West and Morris, 4. I discuss this at greater length in the first chapter of my 2020 publication: Northey, *Transforms*, 1–6. The book series takes the title from Ruth Morris’ preferred terminology/justice mandate.

<sup>24</sup> Northey, 5–6.

prisons into confrontation with many more subtle instruments of control and coercion.<sup>25</sup>

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*” in connecting this not only etymologically, but theologically to the radical subversion of all power structures bereft of human caring (invariably too frequently in those state structures above) in light of the *Cross*: at once *foolishness* and *stumbling-block* ever since Christ’s death. But in God’s *kairos* time, “*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.*”<sup>26</sup>

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*

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<sup>25</sup> Mark Morris, Ed. *Instead of Prisons: a Handbook for Abolitionists* (Syracuse, New York: P.R.E.A.P. [PRISON RESEARCH EDUCATION ACTION PROJECT], 1976), 8.

<sup>26</sup> I Corinthians 1: 24b-25. I reflect on my website (<https://waynenorthey.com/2015/03/17/war-police-and-prisons-cross-examining-state-sanctioned-violence/>—last accessed January 11, 2021), in light of the Cross, on this trilogy of state power structures in “War, Police, and Prisons: Cross-Examining State-Sanctioned Violence.” It is also in Northey, *Transforms: Volume Three*, 77-182.

*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.*<sup>27</sup>

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). 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.*<sup>28</sup>

*Ergo*, Roger Haydon Mitchell’s neologism: *Kenarchy!* 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.”<sup>29</sup>

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

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<sup>27</sup> Morris, *Handbook*, 11; emphasis in original.

<sup>28</sup> West and Morris, 44–45, emphasis added.

<sup>29</sup> Griffith, 28.

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? Do we have a vision with which to replace it?
- 4) How do we get there? Even if we know what is wrong, and where we want to go, and what is holding us back, can we develop a practical plan for getting from A to B?<sup>30</sup>

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.”<sup>31</sup>

Shades of, as seen above, Karl Menninger’s *The Crime of Punishment*, and of Dorothy Day’s oft-repeated: “*That dirty rotten System!*” And it could have been penned today.

In the final paragraph of the book under the heading “KEEPING THE FAITH”, Ruth writes: “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

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<sup>30</sup> Ruth Morris, *Penal Abolition: The Practical Choice: A Practical Manual on Penal Abolition* (Toronto: Canadian Scholars Press, 1996).

<sup>31</sup> Quoted in Menzies, R. & Chunn, D. & Webster, C. D., “Risky business: The classification of dangerous people in the Canadian carceral enterprise.” In *Canadian Penology: Advanced Perspectives and Research* (K. R. E. McCormick & L. A. Visano, Eds. (Toronto: Canadian Scholars’ Press, 1992), 81.

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.<sup>32</sup>

Gordon West also notes that the entire field of criminology arose when criminals were first caged, then closely studied, 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 to study “criminals,” 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.<sup>33</sup>

This is not unlike an aspect of Johann Wolfgang von Goethe’s critique of the Newtonian scientific method, 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.”<sup>34</sup> These new researchers in the emerging field of criminology simply failed to see the brutality of punishment<sup>35</sup> in the penitentiary’s complete physical and mind control of its “specimens,” therefore the axiomatic artificiality of the entire new academic enterprise, together with the ruthless denial of prisoners’ human rights.

Charles Dickens 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.”<sup>36</sup> Postmodernist Michel Foucault 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 and disenfranchised. What most stands

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<sup>32</sup> Ruth Morris, 121.

<sup>33</sup> Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Scottsdale: Herald Press, 1990). Again though, while the intuition was right, it was never pursued to its logical end: *penal abolition*. Zehr when we were colleagues, showed no interest in that; a major failure of the very “imagination” Goethe called for!

<sup>34</sup> *Wikipedia*, “Goethean Science.”

<sup>35</sup> “Behind police [/guard] brutality there is social brutality, economic brutality, and political brutality.” Black activist Eldridge Cleaver, *Soul on Ice* (New York: McGraw-Hill, 1968), 133.

<sup>36</sup> Charles Dickens, *American Notes, 1842* (New York: Penguin ed., 1972), 146.

in the way of putting on new glasses/lenses? The very state bureaucracies of professional law and order actors, 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*. 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.”<sup>37</sup> 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 ready to hear it—one that should leave us thrumming with hope.”<sup>38/39</sup>

Ruth Morris also co-edited with W. Gordon West *The Case for Penal Abolition*. 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, 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.”<sup>40</sup> McMurtry claims, then fills in the details, that the prison does not i)

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<sup>37</sup> Johann Hari, *Chasing the Scream: The First and Last Days of the War on Drugs* (New York: Bloomsbury, 2015), 2.

<sup>38</sup> Hari, 3.

<sup>39</sup> One could also consult this classic: Alfred W. McCoy, *The Politics of Heroin: CIA Complicity in the Global Drug Trade* (New York: Lawrence Hill Books, 2003). “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?dchild=1&keywords=The+Politics+of+Heroin&qid=1610400393&sr=8-1](https://www.amazon.ca/Politics-Heroin-Complicity-Global-Trade/dp/1556524838/ref=sr_1_1?dchild=1&keywords=The+Politics+of+Heroin&qid=1610400393&sr=8-1) last accessed January 11, 2021.

<sup>40</sup> John McMurtry, “Caging the Poor: The Case Against the Prison System.” In Gordon W. West and Ruth Morris Eds. *The Case for Penal Abolition* (Toronto: Canadian Scholars’ Inc., 2000) 167 – 186. 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.

morally reform its keep; ii) does not protect society from violent offenders; iii) is not even a retributive institution—rather something far worse: it serves an “underlying *terrorist function* selecting against the non-violent poor.”<sup>41</sup> 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.”<sup>42</sup>

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.<sup>43</sup> My counterpart under MCC, Howard Zehr, even directly critiqued this author’s writings and my commitment to prison abolition by telling me *one does not attract bees with vinegar* . . .<sup>44</sup> 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: “*Not Enough!*”<sup>45</sup> Ruth’s vision was not at the time in line with Zehr’s, though he liked to imagine so: hers was far more trenchant and grand—and *controversial!*

Ruth would say, as do I, that a “Restorative Justice” out *mainly* to attract “bees” and *primarily* with honey—all sweetness and light—creates *mainly* a “B”-Grade Restorative Justice, one better than retributive justice to be sure, but seriously lacking in vigorous fulsome challenge to what as mentioned Catholic Worker founder Dorothy Day repeatedly dubbed “the dirty rotten System,” of which Western Criminal Justice is a—arguably *the*—key component. To further play with words, Zehr’s preference then for “B-Grade” was in fact to “D-Grade” the revolutionary potential of what Restorative Justice promised.

Western systems of justice have always been infected with brutal Empire/colonization and control/“pacification” motifs. In my retirement years, I have devoted a website

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<sup>41</sup> West and Morris, 175; emphasis added.

<sup>42</sup> West and Morris, 176.

<sup>43</sup> 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 . . .

<sup>44</sup> Some of the following “commentary” appears in the first Volume of Northey, *Transforms*, 1-6.

<sup>45</sup> See the essay by that title in Northey *Volume One*, 84-101.

(waynenorthey.com) to *the Gospel as Counter-Narrative to Empire—the Ultimate Dirty 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.*”

One should not therefore be so much out trying to attract “B(-Grade)s,” one should instead be creatively challenging the very “WASPS” that run brutal justice systems . . . to as it were (for starters) *repent, apologize,<sup>46</sup> make amends, and “sin” no more!* “WASP” in Canada is in fact an acronym for the “*White, Anglo-Saxon, Protestant*” Establishment—historically the very originators and guardians of such stingingly harmful systems throughout the colonized world. (*Not that all working within such systems are necessarily directly caught up in their evil—though ineluctably tainted.*)

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.*”<sup>47</sup> He declares that the one overarching goal of prison is “*to break human beings into subjugated animals.*”<sup>48</sup> He concludes: “The prison is an historical anachronism of the absolutism of power, and must be abolished—step by step.”<sup>49</sup>

In light of this brief consideration of the unmitigated 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.”<sup>50</sup> 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 Barth that “The gospel does not come after the law; it precedes the law.”<sup>51</sup>

We are also taken to the Genesis account of the murder of Abel to see God modelling that,

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<sup>46</sup> Please see Wayne Northey, “Call For a Church Apology”. <https://waynenorthey.com/2015/03/12/call-for-a-church-apology-vis-a-vis-crime-and-punishment-2/>—last accessed January 11, 2021

<sup>47</sup> McMurtry, 176; emphasis in original.

<sup>48</sup> McMurtry, 177; emphasis in original.

<sup>49</sup> McMurtry, 180.

<sup>50</sup> Griffith, 1.

<sup>51</sup> Griffith, 88.



contrary to human understandings of generic justice, *Cain is shown mercy*. And we are told 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 on this: "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.<sup>52</sup>

This awareness fits the African concept of *ubuntu*: 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. 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-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."<sup>53</sup> Whereas "*Truth*" biblically—supremely in Christ "*the Truth*"—is ultimately relational. Nils Christie 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."<sup>54</sup> In other words, Griffith's "*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."<sup>55</sup>

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<sup>52</sup> Eduard Schweizer, *The Church as the Body of Christ* (Richmond: John Knox Press, 1964), 21.

<sup>53</sup> Griffith, 94.

<sup>54</sup> Christie, *Limits*, 57.

<sup>55</sup> Griffith, 95.

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.”<sup>56</sup> 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.”<sup>57</sup> Therefore, when Jesus announced in Luke 4<sup>58</sup> “*freedom to the prisoners,*” it broadcasts a renunciation of “the power of death, and it therefore points toward the resurrection itself.”<sup>59</sup>

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 prisoners—the three criminals on the crosses at Golgotha.<sup>60</sup>

It should in this light never be lost that Jesus himself indeed was “*numbered with the transgressors.*”<sup>61</sup> Or, as theologian Mark Lewis Taylor puts it, Jesus was “*the executed God.*”<sup>62</sup> Taylor also quotes the searing words of long-time Black (formerly) death-row prisoner Mumia Abu-Jamal:

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<sup>56</sup> Griffith, 96.

<sup>57</sup> Griffith, 106.

<sup>58</sup> *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)

<sup>59</sup> Griffith, 107.

<sup>60</sup> Griffith, 118.

<sup>61</sup> Isaiah 45:12.

<sup>62</sup> Mark Lewis Taylor, *The Executed God: The Way of the Cross in Lockdown America* (Fortress Press, 2001).

“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?”<sup>63</sup> 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!*”<sup>64</sup>

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 Penitentiary: An Utterly Disastrous Social Experiment*?**

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* response is the opposite of the ideal! And the Western state is almost invariably 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.

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<sup>63</sup> Taylor, ix. My book review may be found here: <https://waynenorthey.com/book-review/the-executed-god/>; last accessed January 11, 2021.

<sup>64</sup> Griffith, 227; emphasis added.

## 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. The Babylonian Code of Hammurabi 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. 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:

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

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

<sup>12</sup> Yes, 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.

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

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

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

Without doing a Hebrew word study, this kind of justice that Dutch criminologist Herman Bianchi in his book *Justice as Sanctuary: Toward a New System of Crime Control* dubbed “*tsedeka* justice,” with a greater antiquity than the Aristotelian “Give everyone his due.”—that was also rife with inequities—constitutes a central biblical Hebrew concept. 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.

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.”<sup>65</sup> 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 . . . (Matthew 12:33)*” is the Judaeo-Christian wisdom about the primacy of the *outcome* of justice. Bianchi stated elsewhere<sup>66</sup> 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 not to need further 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.*”<sup>67</sup> *Regina versus the individual* in British common law which Canada and the British Commonwealth inherited (*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

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<sup>65</sup> Herman Bianchi, *Justice as Sanctuary: Toward a New System of Crime Control* (Bloomington: Indiana University Press 1994; Portland: Wipf and Stock, 2010), 48.

<sup>66</sup> Keynote presentation at ICOPA II, 1985, Amsterdam. I was there.

<sup>67</sup> See Michael R. Weisser, *Crime and Punishment in Early Modern Europe* (Atlantic Highlands, N.J.: Humanities Press, 1979), 100; emphasis added. Compare also Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge: Harvard University Press, 1983/1997).

rape to ask *how the Queen is doing* . . .

The elements of this enduring move to state law in Western jurisprudence—this “stealing justice-making from the community” were:

1. the separation of criminal and civil wrongs;
2. the assumption of the centrality of the state, thus moving all criminality to the public realm;
3. the assumption of harsh punishment as normative—i.e., “pain delivery,” as a distinguishing mark of criminal law;
4. 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 20<sup>th</sup> century declared to be a “*War on Crime*.” And prison populations have exploded in the United States ever since! Today, with over 2.1 million incarcerated,<sup>68</sup> it is the highest *per capita* prison population in the world. *Land of the Free, indeed!*

Already alluded to, Nils Christie authored *Crime Control as Industry: Towards Gulags Western Style?*, 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.

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 so 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

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<sup>68</sup> At its lowest in 20 years! See: <https://worldpopulationreview.com/state-rankings/prison-population-by-state>. The Kenarchy Journal (2021), 2, 73-102 Copyright © 2021

notorious Russian gulag, in which we are all imprisoned.<sup>69</sup> 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.**

### **Emergence 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.

### **First Criminal Justice Jurisdiction Case of Restorative Justice**

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

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69 In a brilliant work by a friend, David Cayley, *The Expanding Prison: The Crisis in Crime and Punishment and the Search for Alternatives* (Toronto: Anansi, 1998). There is a section devoted to Ivan Illich's understanding of prisons as characteristic of religious ceremonies. 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." 83. 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 Illich and René Girard together somewhat in their understanding of criminals as societal scapegoats. See also: Marcus Peter Rempel, *Life at the End of Us Versus Them* (Victoria: Friesen Press, 2017). That does the same more generically in a full monograph discussing both thinkers. Nils Christie whom Cayley counted as a good friend, is also discussed at length. Both publications are exciting, insightful and disturbing reads!

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 eventually the most replicated in mediation programs worldwide.

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”<sup>70</sup> or “Kitchener Experiment” was then a kind of proverbial shot that echoed around the world. 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?**

#### **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 11<sup>th</sup>-century *satisfaction theory* of the *atonement*.<sup>71</sup>

Early in the development of Restorative Justice in Canada, my friend Professor Vern

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<sup>70</sup> See a fuller account in Dean Peachey, “The Kitchener Experiment” in Martin Wright and Burt Galaway, Eds., *Mediation and Criminal Justice: Victims, Community, and Offenders* (Newbury Park, CA: Sage Publications, 1989), 14-26.

<sup>71</sup> See Timothy Gorringer, *God’s Just Vengeance: Crime, Violence and the Rhetoric of Salvation* (Cambridge: Cambridge University Press, 1996).



Redekop<sup>72</sup> of St. Paul University, Ottawa Canada, authored a widely approved piece: *Scapegoats, the Bible, and Criminal Justice: Interacting with René Girard*. In it Redekop posed the question: “Is it possible that what we call a Criminal Justice System is really a scapegoat mechanism?”<sup>73</sup> 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*.”<sup>74</sup> He explained: “When one considers how much crime is unreported, how few crimes are brought to trial and among those how few result in conviction and prison sentences it turns out that we in Canada imprison 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*. Those individual criminals who warrant sensational news coverage, can function as scapegoats themselves.”<sup>75/76</sup>

The case of Bobby Oatway was a classic Canadian example. You may read the paper Chaplain Hugh Kirkegaard and I did on my website,<sup>77</sup> and in *Volume One* of my publication series, *Justice That Transforms*, entitled: “The Sex Offender as Scapegoat: Vigilante Violence and a Faith Community Response.”<sup>78</sup> 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

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<sup>72</sup> He has been working creatively in conflict studies for decades. You may see more of Professor Redekop’s work in relation to René Girard, here: <https://ustpaul.ca/blog/post/28-celebrating-the-life-and-thought-of-rene-girard/>—last accessed January 11, 2021.

<sup>73</sup> V. Redekop, “Scapegoats, the Bible, and Criminal Justice: Interacting with René Girard.” *New Perspectives on Crime and Justice Issue #13* (Akron, PA: Mennonite Central Committee Office of Criminal Justice, February, 1993), 1, emphasis in original.

<sup>74</sup> Redekop, 33; emphasis in original.

<sup>75</sup> Gil Bailie, *Violence Unveiled: Humanity at the Crossroads* (New York: Crossroad, 1995), 79, supplies a particularly sinister example, the 1989 execution of serial killer Theodore Bundy, when hundreds of men, women and children camped outside the Florida prison in a festive spirit one reporter likened to a *Mardi Gras*. The same reporter described the event as “a brutal act... [done] in the name of civilization.” Bailie reflects on that commentary thus: “It would be difficult to think of a more succinct summation of the underlying anthropological dynamic at work: *a brutal act done in the name of civilization*, an expulsion or execution that results in social harmony. Clearly, after the shaky justifications based on deterrence or retribution have fallen away, this is the stubborn fact that remains: a brutal act is done in the name of civilization. If we humans become too morally troubled by the brutality to revel in the glories of the civilization made possible by it, we will simply have to reinvent culture. This is what Nietzsche saw through a glass darkly. This is what Paul sensed when he declared the old order to be a dying one (I Cor. 7:31). This is the central anthropological issue of our age.” Emphasis in original.

<sup>76</sup> Redekop, 33–34; emphasis added.

<sup>77</sup> See: <https://waynenorthey.com/2014/03/10/the-sex-offender-as-scapegoat/>—last accessed January 12, 2021.

<sup>78</sup> Northey, *Transforms*, 159-175.

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.**

### **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 Judaeo-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, 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.*”<sup>79</sup>

*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: Amen!

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<sup>79</sup> Isaiah 11:6-9.

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