

Prison Fellowship International Award: Peace Foundation Melanesia Bougainville

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Abstract

This is the story of an award presented to Peace Foundation Melanesia (Bougainville) by Prison Fellowship International for its work in fostering restorative justice in their communities.

In the past forty years the Western world has experienced a body of reformers who have made efforts to introduce Restorative Justice to a judicial system which no longer provides true justice. Restorative justice deals with crime by meeting the needs of victim, offender and community rather than by the letter of the law, retributive justice and prisons. The Restorative Justice process continues to gain popularity and official acceptance in almost every country in the world.

During the ten year civil war in Bougainville, people returned to the ancient process of Custom law, which aims at restoration of the victim, reform of the offender and the opportunity for the community to be involved in its own justice. In essence, the only difference between Custom law and Restorative Justice is the customary twist of attitudes and values of the two groups.

During the civil war, Peace Foundation Melanesia was invited by the Interim Government of Bougainville to train people in conflict resolution skills. Instead of introducing something new and different the field officer chose to work with those already using custom law. Practitioners already knew the process of restorative justice (custom law). What remained to be done was to confirm the details of the processes, and prepare it as a course for training in the villages. This training in the ancient customs was welcomed and applied by the people of Bougainville and even today, it is still the preferred approach in dealing with conflicts.

Prison Fellowship International is a body comprising thousands of volunteers, world wide. Their mission is the following of Jesus Christ, his teachings and his ideals of restorative justice, and to carry this work to prisoners, victims and families damaged by crime. Every three years it presents awards to individuals and groups who have made a major contribution in the field of Restorative Justice. This year, 2007, Peace Foundation Bougainville was the chosen group because of its dedication to Restorative Justice. As stated in the award, it is a body which has built on its own justice traditions, it operates at the level of the grass roots and proved itself sustainable for the past fourteen years

Keywords: Prison Fellowship International, Peace Foundation Melanesia, restorative justice, custom law, state law, Bougainville, civil war, reconciliation, mediation.

Introduction

This report offers an insight into one means of promoting justice and reconciliation. Restorative Justice is particularly suited to the cultures of Papua New Guinea (PNG) and has been successfully employed in and after the Bougainville crisis of 1988-1998. This article reports on one aspect of international recognition that the PNG Restorative Justice process has received. The Prison Fellowship International Conference of 2007 awarded the Peace Foundation Melanesia (Bougainville) its award for restorative justice.

Prison Fellowship International

Prison Fellowship International has a vision to be a reconciling community of restoration for all those involved in and affected by crime, thereby proclaiming and demonstrating the redemptive power and transforming love of Jesus Christ for all people (www.prisonfellowship.org). It is open to all who believe in the orthodox truths of Christianity as historically proclaimed by the church in the Apostle's Creed and the Nicene Creed.

The founder of Prison Fellowship chose to open the Fellowship to all Christian churches and sects to avoid bickering which could only tear the seamless body of the Church and cause a scandal to the very people for whom the Fellowship was intended. At the time his decision was a very controversial one and accusations of heresy and watering down the faith were common. Now the unity embedded in the decision is worn as a badge of honour.

The mission of Prison Fellowship is to exhort and serve the Body of Christ in prisons and in the community in its ministry to prisoners, ex-prisoners, victims of crime and their families; and in its advancement of biblical standards of justice in the criminal justice system (www.prisonfellowship.org).

It is the world's largest and most extensive criminal justice ministry, with a global association of over 100 national Prison Fellowship organisations. It is active in every region of the world with a network of more than 100,000 volunteers worldwide working for the spiritual, moral, social and physical well-being of prisoners, ex-prisoners, their families and victims of crime (www.prisonfellowship.org).

A further purpose of the movement is to reform criminal justice around the world by expanding the use of restorative justice. Prison Fellowship does this by supporting the efforts of governments, intergovernmental organisations,

non-government organizations (NGOs), and the broader Restorative Justice movement.¹

The award to Peace Foundation Melanesia (Bougainville)

At its convention that is held every four years, Prison Fellowship grants a number of awards to people and groups who further the work of extending the use of Restorative Justice

In line with its policy of encouraging NGOs in restorative justice, Prison Fellowship International, on the advice of Professor John Braithwaite (Law Program Research School of Social Science, Australian National University) selected Peace Foundation Melanesia (Bougainville) from a list of nineteen NGOs for its work in spreading restorative justice.

Development of justice

The justice system accepted in most of the world today is relatively recent in terms of world history. What is particularly different in the ancient legal system was that the offence was considered principally as a violation against the victim and the victim's family. The community also had an interest and responsibility in seeing that the wrong was addressed and the offender punished but in the law as it is today the offence is considered primarily as an offence against the state (Van Ness, 1986, p.64).

Ancient law from the time of the first written documents (Code of Hammurabi 1700 BCE) focused on the victim and the right of the victim to restitution; the Old Testament Law insisted that the victim be repaid; Roman law required compensation for the victim and double the value of the goods stolen; among the German and the Anglo-Saxons tribes there were compensations and restitution for the victim, even for murder (Van Ness, 1986, p.65). Generally the purpose of law was to avoid blood vengeance, suppress crime, penalise illegal behaviour and bring the relations of the disputants back into balance so that life could resume its normal course (Van Ness, 1986, p.223).

Rise of state law

The Norman Conquest marked the beginning of the end of the victim/community centred approach. When William became King of England (1066) he took title to all the land and apportioned it to his supporters and the church. Henry 1 (William's son) introduced a law regarding 'king's peace' which gave him jurisdiction over criminal offences including arson, murder and most crimes of violence.

¹ Programs offered --Training national leaders; Faith based prisons. Communities for Restoration, Angle tree for Children of prisoners; Sycamore tree for reconciling victims and offenders-; Centre for justice and reconciliation for advice on extending Restorative Justice to governments and others.

Under this law, crimes were no longer an injury against the victim and the community but an injury against the king and the fines and compensation went to fill the king's treasury. Thus ended the age of the victim, to be replaced by the age of the state. From this point forward criminal justice emphasises control through punishment designed to deter, incapacitate or reform criminals. If victims wanted to recover their losses then they were obliged to sue in the civil courts (Van Ness, 1986, p.66).

Retributive justice and state law

Over the years power has moved from the king to parliament but the judicial policy has remained unchanged. Retributive justice, punishment and prisons are the norm for treating persons guilty of crime.

Members of the public, long denied any serious debate about these policies; now clamour for draconian laws to punish criminals, and politicians compete with each other to pass laws to satisfy them. The plight of the victim remains untreated; the community is ignored and the criminal is imprisoned and removed from sight (Marzinsky, no date, p.1).

Prisons victimise the poor; they do not provide justice and they offend against the social contract.

In following a retributive model of criminal justice based primarily on punishment and vengeance, the world in the past two centuries has created a monster whose pernicious effects are impacting everywhere. Yet of all social policies, surely this is the most failed. Never has any social system been so expensive and failed so consistently as has the system of criminal justice and imprisonment we adhere to so slavishly. Where has it ever worked? Never has any tax dollar been less scrutinised for its fruitfulness than the criminal justice dollar² (Consedine, 1999, p.1).

A change of focus

Today's reformers are calling for a change by moving away from the letter of the law towards a Restorative Justice approach.

Restorative Justice is a theory of justice that emphasises repairing the harm caused by criminal behaviour. It is best accomplished through cooperative processes that include all stakeholders. All activities procedures and, methods of training are measured by Restorative Justice principles.

Restorative Justice responds to specific crimes by emphasising recovery of the victim through redress vindication and healing as well as recompense by the offender through reparation, fair treatment and rehabilitation. It seeks processes through which parties are able to discover the truth about what has happened

² Father Jim Consedine - Prison Chaplain and National Co-coordinator, Restorative Justice Network, New Zealand.

and the harms that resulted, to identify the injustices involved and agree on future actions to repair those harms (Van Ness & Heerderks, 2006, p.58).

The community is involved in building its own values and the offender is brought to understand the damage caused by his or her crime leading to apology restitution forgiveness and reform. The duty of the state is facilitator and executor. This process is championed by Prison Fellowship to change prisons and assist governments to develop a more human approach to crime, offenders and victims.

Custom law and Restorative Justice in Melanesia

The social contract

Melanesians, as hunter gatherers and later in settled villages, developed a social contract to govern their relations with one another. This was a common feature of all small communities and is enshrined in Decalogue of the Bible (Deut: 5. 6-21): Thou shalt not kill, steal, lie, commit adultery, rape or gossip.

In Melanesia there were also the social obligations of gift-giving, mutual assistance (a village banking system), and care for the young and old.³ It was a system made to support the quality of life in the community.

Melanesians followed the contract, not because they were good and virtuous, but because without it they did not survive. Survival as the bottom line was the measure of all cultural behaviours. Those who provided most for survival received favoured treatment and those who provided little received less. Women and children, as in most societies at the time, were on the bottom of the list for favours but they had their own ways of gaining what they wanted and were not unduly oppressed.

House of Assembly accepts custom law

In 1973 the new Papua New Guinea House of Assembly contained a number of educated and articulate young men who had experienced racial discrimination, persecution by government officials and loss of ancestral land at the hands of Western courts and they wanted reform.⁴ Reports to the Constitutional committee show the depth of their feelings.

The price of the impact of Western colonisation has been sapping of the initiative of our people. We seek to promote traditional ways such as participation, consultation and consensus and a willingness of privileged persons to boldly forgo benefits to enable those underprivileged to have a little

³ There is no altruism. People openly regard each other as sources of mutually beneficial goods and services. The rule of reciprocity is the where the mutual obligations entailed via relationships are observed, each party will derive advantages from the other. (Lawrence.1969, p29)

⁴ The law was specific, made numerous distinctions between the white and the black. It not only deprived us of our land, but forced us to work for the expatriate plantation owners to whom the law gave our lands. (Kaputin Minister for Justice.1975 p.21)

more. Among friends, our way of life was to come to decisions by a long process of consultation and consensus. This process is a central element of true democracy and government. This is a process which is most conducive to social harmony co-operation and common good. (Brunton and Colquhoun-Kerr, 1984, p.21)

One of the decisions of the House of Assembly was to reintroduce Custom Law which had been which had been replaced by state law from the beginning of colonial control.

Some of the Australians in the administration supported the application of Custom Law as a way of reaching out into the distant parts of the country but there were also strong opposing voices from jurists in Australia who thought that Custom Law meant nothing more than payback and the customs of a thousand tribes. Their argument was that the western system of justice had developed the laws of the land, made by parliament and administered by the courts. They pointed out that law based on customs had no separation of powers and no common way of dealing with the many customs of the thousand tribes. Custom Law for its part held that they had the customs of a thousand tribes, made by the clans and administered by Custom Law. While the Australian jurists wanted uniformity of laws Melanesians preferred uniformity of process.

Mediation and Restorative Justice were written into the constitution and village courts were set up and instructed to use this approach.

Custom Law

Custom Law was developed to administer the social contract and the customs of the people. The small village where people all knew one another made for a social setting of disputes familiar to all, and access to information was easy. The power of every person involved was properly held in balance by the power of others.

Leaders had many social obligations to others in the village and they may have been inclined to favour them in decision-making, however sanctions ranging from sorcery to exile constrained leaders and kept them honest.

Under Custom Law life for the villager was usually good. It was not a 'garden of Eden' as some would have, nor was it the hell on earth as was believed by many missionaries and others. Three things were a major threat to the 'gutpela sindaun'. There were the danger of raids from enemy villages, the threat of sorcerers and arrogance of the powerful, greedy leader who went above the law.

Custom Law was the ideal but other retributive processes were also used. In Bougainville for instance punishments could be applied to thieves by severing a finger (Nasioi), pressing of hands into a flaming coconut shell (Eivo), or burning the feet of suspected sorcerers (Trompf, 1994, p.14).

Custom Law in Bougainville

One hundred years of colonial government and western cultural ways caused immense damage to custom and almost extinguished the knowledge Custom Law.

Colonialism had a manifold impact on the dispute settlement process. The most important impact was the introduction of the dispute settlement process external to the community. This consisted of the official courts structure for the maintenance of law and order. The *kiap*⁵ was the main instrument of the colonial law and order machinery. Inside the village he had ministerial powers and settled disputes (Paliwala, 1982, p.194).

Bougainville however was distant from the capital of PNG and was less visited because of the constraints of money and transport both to the island and internally. The Catholic and Methodist missions provided most of education, medicine and communications which were normally government duties. The result was that the damage to the existing dispute settlement was much less in Bougainville than in areas more under control. Thus when John Tompot, a Bougainville Custom Law practitioner, quoted his grandfather on the process of Custom Law he was still reasonably close to the traditional process.

The overriding philosophy of all Melanesian Custom Law (Restorative Justice) was to bring peace, mend broken relationships and provide satisfaction for all stakeholders so that they could get on with their lives. It was made up of four connected processes- Consensus, Reconciliation, Mediation and Restorative Justice.⁶

Four Custom Law processes

Consensus

Consensus is one of the survivors in Melanesian society. Even today it is still alive and well in most villages. In the villages people speak about any thing that brings harm to the community. Common disputes are about gossip, sorcery, failure of fishing, a garden blight or immoral behaviour. Talk to solve a problem continues for as long as required, days, weeks, months or more. Often the other three processes of Custom Law were called on to make a settlement. Decisions are open ended and can always be called back for further talk.

Geoffrey M. White, an anthropologist working in the Solomon Islands, reported that even bad thoughts and feelings posed a danger to personal and community well-being if they remained hidden. Such a danger comes in the form of illness, injury or failure of important activities such as ceremonies, hunting and fishing. The disentangling takes two forms; as a therapeutic activity aimed at social causes of illness or misfortune; and as a preventative

⁵ The German word 'kiap' was the equivalent of the Australian Patrol officer.

⁶ The names given here are as close as we can get to the dictionary definition for custom processes but still do not fit the Melanesian understanding of these processes.

measure used to dispel bad feelings that could interfere with collective projects such as turtle hunting. People see disentangling as a cleansing, a moral cleansing and instrumental means of ex-creating personal conflicts that could prove injurious.

The disentangling puts as a symbolic seal on old wounds and conflicts, certifies that social relations and personal thoughts/feelings power in a state of solidarity, thereby threatening neither self nor community. The activity has been Christianized in some respects such as now there is the customary presence of a priest to listen as people speak their minds (White, 1991, p.192).

Reconciliation

Reconciliation was used to deal with violent episodes in the extended family, clan, village, tribal fight and more recently, the civil war. The first step was to suspend fighting permanently so that people could get on with their lives. This was followed by a meeting of all stakeholders for a peace/reconciliation ceremony in which they exchanged native wealth, food and pigs and expressed potent rituals of forgiveness. Many lengthy speeches provided guarantees of an end to hostilities and peace for all to move about freely. At this stage there were no accusations of wrong doing and no confession of guilt for wrongs done. Melanesian Custom Law brings together justice and forgiveness in a unique parcel effective in healing even serious conflicts.

In Bougainville reconciliation was the main instrument for ending the civil war. During the nineteen nineties, hundreds of reconciliations took place throughout the island to bring peace to the damaged communities. Reconciliations were often repeated after intervals of one, two or five years to confirm the treaty and at one such gathering, there could be a confession of guilt and a promise of restitution to the bereaved family.

Reconciliation is a unique element of Custom Law in which forgiveness and justice come together. People I spoke to did not seem to feel that it was a virtuous act. They saw it as a necessary act of will for getting on with life rather than something emotional (Howley, 2002, pp.102-118).

State law has no equivalent to this and attitudes in the Western world are so different that people used to the Westminster system have problems of acceptance because it contains neither sanctions nor punishments. In the West forgiveness is not highly regarded and justice has often come to mean punishment and legalised vengeance-payback handed out by the court instead of the victim.

Mediation

Melanesian mediation accepted the general Restorative Justice aim which is to mend broken relationships and bring peace to the community. Although it is said that Melanesians did not differentiate between civil and criminal offences, in fact mediation was used for civil matters such as land and property disputes; Restorative Justice was for criminal matters.

Working in Bougainville Peace Foundation, trainers found that it was necessary for the disputants to tell their stories. However stories often varied so much that there was insufficient commonality to reach a solution. To use the stories of the various parties as a basis for mediation was an invitation to chaos. To avoid this problem we moved the emphasis away from the story and concentrated on the solutions to the problem. Even so the disputants still had to tell their story. This was done in the preliminary meeting when the mediator met each group separately. The story was again told briefly by the mediator. Then the meeting could move on to the solutions that the stakeholders could agree on and come to an eventual win-win solution.

A well managed Melanesian mediation is more likely to look forward to the possibilities of a mutually satisfying decision so that both parties get something and can come away satisfied with the result. Court administered decisions on land disputes in Melanesia have had a difficult history because they are based on the story and evidence. They do not have the latitude to settle for a win-win solution and a mutually acceptable solution.

Restoring after crime (Restorative Justice)

Melanesians recognised that complete redress for crime was not possible in their small communities. To deal with this problem, Custom Law provided a ritual punishment to replace the feud of killing and payback. It involved all stakeholders: the extended families of the victim, the offender and the community.

The family of the victim and the community confronted the offender with the harm he had done by his criminal behaviour. This invariably caused shame to the offender.⁷ He was called on to accept responsibility for his behaviour and to offer an apology and restitution to the family of the victim. The family of the victim then set the amount of the restitution in native wealth. After they had accepted the apology, the families organised a ceremony of forgiveness and reconciliation at which the offender was restored to the community. Where necessary, the extended family were required to provide parole against future offensive acts.

The psychological impact of facing the offender with his behaviour and requiring that he accept responsibility for the suffering experienced, cleansed much of the trauma suffered by the victim and carried a powerful therapeutic effect. While Restorative Justice and a ritual punishment was the ideal, in some Melanesian communities Restorative Justice included retribution, expulsion from the community, exile or even execution⁸ (Howley, 2002, p.122 & pp.124-5).

⁷ ...of the forces are built into New Guinea society for the prevention of wrong action the most obvious is social isolation, public opinion, criticism, shame and the most important. (Lawrence 1969 26)

⁸ During the civil war there were occasions when a fighter became completely intractable. If warnings failed the chiefs would meet and if agreed they would instruct the relatives to 'take him hunting' -

Occasionally people in the Western world ask how people with no vision of Jesus Christ could attain such a model of justice and forgiveness. There is no need for God as there first.

Peace Foundation Melanesia

The Foundation for Law, Order and Justice was founded by Bernard Narokobi, the then Minister for Justice (1989), to make a study of the growing lawlessness in Port Moresby. In 1993 it added a Conflict Resolution branch to its other activities. The civil war in Bougainville was already three years old and Peace Foundation Melanesia was invited to Bougainville by the Interim Government in 1994. The Foundation for Law, Order and Justice was a very effective instrument in making the required study and providing advice but when funding from the Department of Village Services was withdrawn in 1995 it folded through lack of funds.

By 1995 Restorative Justice training had been progressing in Bougainville for more than a year, so the new Director, Pat Howley, reregistered the foundation under a new name, Peace Foundation Melanesia and went hunting for funds to continue work in Bougainville. Conflict Training began with village people and the response was so popular that a decision was made to train trainers.

At the first Training of Trainers course John Tompot, a minor chief from a hamlet in Siwai, reported that he had been doing conflict resolution himself. He explained that he was able to remember the stories of his grandfather who was a noted peace maker and he had applied his knowledge to the situation. He related how he had been called on to deal with the murder of a civilian in a nearby village⁹. He explained how he had called on the family of the victim to tell of their hurt and loss. When they had done so, the community were invited to speak and finally the victim was called on to speak. Shamed and repentant the young men apologised, offered apology and restitution. This was accepted by the family of the victim who set the restitution in lengths of shell money and asked for a reconciliation feast at which four trees would be planted to represent the dead boy and those who had killed him.

Bougainville had returned to its traditional process of Restorative Justice to deal with the lawlessness of civil war. This method was not a recent development, for it had had been used for thousands of years.

The Restorative Justice model provided by John Tompot was accepted as the most suitable model for training and over the next three years manuals were rewritten, new trainers trained and courses carried into the villages.

Writing seven years later Volker and Garasu (2004, p.574) were able to say;

⁹ During the civil war there was an unspoken agreement that civilians were not to be harmed. However there were some caught in the crossfire, some tortured by the criminals and some killed on suspicion of being spies.

Special mention should also be made of the Peace Foundation Melanesia, whose members worked for peace in Bougainville even in times of the fiercest warfare¹⁰. At the core of the Foundation's activities are workshops to train grassroots people as mediators in conflicts at the local level. Peace Foundation Melanesia managed to train a total of 160 trainers between 1994 and 2000. They in turn helped to conduct 250 mediation courses for a total of more than 6,400 participants. As with the healing-of-memories seminars these courses of Peace Foundation Melanesia did not introduce fixed, external, modern Western-style concepts of conflict resolution into the Bougainvillean environment, but built upon the customary indigenous experiences.

Phillip Miller who lived in the bush with his community development team said of the trainers.

The real heroes of the work of Peace Foundation Melanesia were the trainers and participants who worked in all kinds of weather and sometimes in risk of their lives. They represent different Christian denominations and indigenous religions, and the full range of positions within communities. They are all subsistence farmers and their part time remuneration from Peace Foundation was barely enough to cover their food. I have seen trainers heading off into the mountains in pouring rain with an eight hour trip ahead of them and wondered what motivated them. They were the people whose sacrifice made the difference. (Miller, 2002, p.5)

The peace process was the work of many people

Mothers went into the bush to attempt to bring their sons home. Moreover, women's groups and individual women leaders also became important players in the political arena. They organized peace marches, peace vigils, peace petitions and prayer meetings for peace, thus putting pressure on the male leaders of the warring parties (Volker et al., 2004, p.573).

Prison Fellowship choice of Peace Foundation Melanesia (Bougainville)

Dr Daniel Van Ness in presenting the award to Peace Foundation stated;

Three features of the Peace Foundation Melanesia's work have made it different from other NGOs. First, it is very much a grassroots organization. Second, it provides a skill rather than a service or product. Its goal is to help Bougainvilleans learn to help their communities resolve disputes, not to do that work itself. Third, its training stimulates participants to think of solutions and approaches by posing questions and using small groups to work on answers. The trainer is a facilitator, not a lecturer bringing in outside and (therefore) foreign ideas. All three of these features underscore a key message of Peace Foundation

¹⁰ Three Peace Foundation Melanesia trainers Tony Kasia, Tony Kaima and Angelina Nuguitu paid for their devotion to duty with their lives when they were shot as spies by the BRA and Resistance.

Melanesia: Bougainvilleans are able to build peace among them. I take great pleasure in presenting the 2007 International Prize for Restorative Justice to Peace Foundation Melanesia for its work in Bougainville. (Van Ness, 2007)

Even now the work continues

The Catholic Church is the largest denomination in Bougainville and each year the Priest responsible for assisting youth holds a convention in one of the larger villages. In 2007, the April convention in Arawa proposed the idea of carrying a reconciliation cross because there were still people in the villages in need of reconciliation. These were those who had missed out on previous reconciliations and whose acts of murder, rape or arson had never been forgiven. As a result they had been estranged from their families even though they lived in the same village.

In April 2007 the cross began its journey from Buka followed by a thousand youths who had experienced the crisis either as fighters, victims or even children traumatised by the fighting. At each village the cross stopped for prayers and people in need of reconciliation came forward and went through a ceremony of reconciliation with those whom they had offended, exchanging buai (betel nut), offering restitution and being forgiven. For some this was too much and they held back but when the cross was ready to move on the next day the leaders would declare the cross stuck until the final reconciliations had been completed.

There are many more villages waiting for the cross and its work will not be done until the villagers are reconciled.

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Pat Howley is a member of the Marist teaching order and a lecturer at Divine Word University. He has spent more than forty years in Papua New Guinea as teacher and Headmaster at St Xavier's, Principal of Passam National High School and Director of Student Affairs at Divine Word Institute.

More recently he has become a trainer in Conflict Resolution with a non-government organisation, Peace Foundation Melanesia. Working as field officer, he set up training in Mediation and Restorative Justice in squatter settlements around Port Moresby, and trained trainers to extend the work. Further training was carried out for Corrective Institute in jails around the PNG, with Police, the village people of Lakakamu in the Gulf and people in West Tauraka (Lae)

In 1994, when he was called to conduct conflict resolution training in Bougainville, he learned about custom law and restorative justice and the way that Melanesians had practiced it for thousands of years. After seven years he returned to Australia to write a book *Breaking Spears and Mending Hearts*, the story of peace makers who worked and risked their lives to bring closure, forgiveness and reconciliation and bring to an end to the Civil war. Pat Howley has been called on to speak at a variety of conferences both in PNG and overseas on the matter of Custom Law and restorative justice. He is also the author of a number of published works on the topic.

