

RESTORATIVE JUSTICE – CREATIVE PEACEMAKING

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Introduction

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. As social decay has taken on a more marked appearance in recent years and the number of poor has grown, imprisonment and harsher penalties have taken on a fresh urgency in the minds of many politicians and with parts of the wider public. 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 dollar.

Crime is prevalent in every country. It has to be confronted and dealt with. That is not an easy task, with varying forms of violence occasionally enraging whole communities. What is not often recognised is that prisons are themselves a form of structured violence which transgress every major distinguishing mark that makes people fully human. Locking adults in small cells for up to 23 hours a day is an act of violence. Leaving children minus an imprisoned parent punishes the innocent and does violence to a family. Prisons help create more crime by bonding similarly minded rejected members of society together. They are spiritually bankrupt in that they suppress the growth and freedom of people. They up-skill their graduates in further anti-social techniques. They are the principal recruitment locations for gangs. They can stigmatise offenders and families forever. They create thousands of future victims because they guarantee continued high rates of re-offending. They fail in practically every positive human indicator scale. Prisons are structures of violence.

The Myth of Redemptive Violence

The myth behind the consistent worldwide demand for longer, tougher prison sentences is that this type of violent process can change people for the better, that violence can be redemptive. It is the philosophy that spawned floggings, canings, strappings and birchings by state officials in prisons and schools in past generations. It is a demand that can never be fully met. The dark side of human nature can never be satisfied – enough is never enough. This myth is the grandparent of much physical child abuse in our own time.

As theologian Walter Wink points out, the myth of redemptive violence has been the choice of every major social grouping of the 20th century, be it socialist, Marxist, capitalist, communist, whatever.¹ This myth enshrines the belief that violence saves, that war brings peace, that might makes right. Nations have made redemptive violence the acceptable way of resolving injustice. Internationally, if nations have had a grievance it has been resolved either by the threat or use of violence. Only violence would correct (redeem) the injustice.

The results of this redemptive violence have been horrendous. We have just emerged from the most bloodthirsty century in history, with hundreds of millions of innocent people killed in its name. We have set out in the new millennium upon the same war-torn path.

We have applied the same philosophy and approach to domestic conflict, especially crime. Beat them and beat them hard, has been the catch cry down through the ages. Lock 'em up (an act of violence) and throw away the key. Let's hope that this violence will somehow redeem the situation and produce justice. It rarely if ever does. And so more and more prisons have been built and, while flogging and execution have been outlawed for 40 years in this country, the culture of state violence has remained through an expanding network of prisons.

Such an approach is testimony to our inability to find creative non-violent solutions. We act less than humanly when we continue to resort at first instance to violent solutions to society's problems. Yet we do it all the time. Both war and prisons are violent responses to conflict. We rightly condemn aggression both on the domestic front and internationally. We can even move to ban

¹ Walter Wink, *The Powers that Be – Theology for a New Millennium*, Doubleday, New York, April 1998

smacking. But then we continue to respond with increased violence ourselves through promoting longer prison sentences. It doesn't make sense, especially when there are creative non-violent alternatives available.

Imprisonment is a process that systematically attacks every positive dimension of human existence, intellectual, social, spiritual, emotional and psychological. It produces systemic violence on a grand scale. Yet so often the public cry is for more. In terms of community usefulness and the promotion of the Common Good, prisons are a costly failure, in both financial and human terms. They are the dinosaurs of the modern age. As a 1993 *Time* magazine front cover boldly proclaimed, 'Each year jails take large numbers of hopeless people and turn them into bitter hopeless people'.

People faced with crime often ask, 'but what can be done?' A small number certainly need to be incarcerated in humane containment to protect society. Otherwise, we can and should explore and promote constructive non-violent processes. The crucial question is: are we mature enough as human beings to develop and sustain non-violent processes to better deal with issues of crime?

Biblical Justice

The Bible speaks often about crime and punishment. Naturally it deals with what flows from violations of law, and in particular with what flows from violations of its most sacred law, the Torah, which contains the commandments of God. But all law was not of equal status in biblical times. Consequently, how one dealt with offenders varied depending on a wide variety of circumstances.

There was no centralised code of law or criminal justice system such as we have now. A Jewish understanding of Hebrew law has often been quite different from a Western understanding of the same law. So, for example, when Jesus is accused of breaking the law on the Sabbath, rather than being arrested and charged, he merely has an argument with his accusers about the ruling itself and the nature of law, and he is left to move on.

The emphasis in Scripture was usually on restitution and restoration, not vengeance and punishment. Restitution was seen as a way of setting things right. If property was stolen, then the property should be returned; if damage was done to someone's house or field, then the person responsible for the damage should repair it.

The focus on crime in biblical times was not so much on individuals as on the community. Corporate responsibility was central to the Hebrew understanding of crime. The Scriptures renounced any scapegoating that claimed that crime was only the responsibility of a few evil individuals within the society. When the law was broken, there was corporate responsibility. Violence and breach of law pointed to a crisis in the very fabric of the society.

The central feature of biblical law is a constant calling forth of the people to a future promise. The emphasis is on the future health and well being of the community, and not on the immediate transgressions of the law. The covenants agreed to by the people with Yahweh always emphasises this future direction.

The test of justice in the biblical view is not whether the right rules are applied in the right way. Justice is tested by the outcome. The tree is tested by its fruit. It is the substance, not the procedure, that defines justice. And how should things come out? The litmus test is how the poor and oppressed are affected.

In biblical times such justice was enacted on an everyday basis in Jewish settlements. Citizens went to the city gates to seek justice from the judges or elders who presided there for this purpose. The whole focus for this 'court' setting was to find a solution for the aggrieved person. The judge was not primarily the one who rewarded some and punished others. He was the one who created order and restored what had been destroyed.

Surely the scriptural quote most abused and taken out of context has been that of 'an eye for an eye'. Public perception of its meaning is usually the opposite of what is intended. The concept of *lex talionis*, the law of proportionality, simply says that you should never claim more than the value of what is damaged. If property worth 100 gold coins is stolen, then you cannot claim 200 coins in return. If you took more than what was just, then you in turn could be punished. Martin Buber, the famous Jewish scholar, in his German translation of the Scriptures translates 'an eye for an eye and a tooth for a tooth' as 'an eye for the value of an eye, a tooth for the value of a tooth'. It is a

concept that occurs only three times in Scripture, whereas mercy appears several hundred times.² Later in the New Testament, Christ specifically rejects this notion when he says quite emphatically: 'You have heard it said "an eye for an eye". But I tell you, do good to those who harm you.' (Matt 5/38-42)

The New Testament and Justice

In the New Testament Jesus clearly states that justice should be based on principles of forgiveness and reconciliation; that retaliation plays no part. He forgave the Genasene maniac, the prostitute, the adulteress, the tax gatherer who was an extortionist, the robber. He charged us both to place distinctions between wrongdoers and the virtuous, yet to see ourselves as all in the same camp - brothers and sisters with varying strengths and weaknesses.

Reconciliation is at the heart of the New Testament understanding of justice. In the story of the rich man and Lazarus (Luke 16/19-31), Jesus explicitly teaches that the poor man has rights and the rich man is obliged out of a sense of justice, not charity, to share what he has from his table. Here Luke draws on Leviticus 25/35, which spells out the obligations of the rich to the poor. The rich man fails to recognise that though he may well have come by his wealth by perfectly legal means, in justice he still owes part of his wealth to Lazarus, who has nothing. He fails and is condemned. Here Jesus explicitly expounds the nature of justice in terms of sharing with the needy, the poor, the vulnerable. Lazarus and the rich man can only ever meet and be reconciled as brothers through the sharing of the riches.

Jesus teaches generosity of spirit when it comes to dealing with crime. To the woman facing the death penalty, he said simply 'go and sin no more'. (John 8/1-11). He rejected any notion of just desserts in the story of the prodigal son and loving parent (Luke 15/11-32) and in the vineyard workers parable (Matt 20/1-16). In the latter, the day workers give us another reminder as to how God's justice works. Each got paid at the end of the day what they needed to feed their families, even though they had worked uneven hours. It's a parable of restorative justice. Provide what is needed. Jesus also teaches 'forgive seventy seven times seven'. Surely too hard? Not so, says Jesus. It's not easy but it can be done. In effect he teaches that if we don't attempt these very difficult matters then we run the grave risk being damaged spiritually ourselves.

Jesus also teaches, 'If anyone hits you on the right cheek, offer him the other one as well. Give him your coat and your tunic, walk two miles not one.' (Matt 5/38) This is radical stuff - and quite practical today if properly understood. Jesus is asking for a generous response from those who have been victimised by crime. He knows that unless people take such an attitude, they will usually end up becoming doubly victimised. The first time will be with the actual crime. The second will be through the hurt, bitterness and feelings of vengeance that can so easily poison a person's spirit if allowed to germinate. These are wise teachings indeed.

The account of the tax collector Zacchaeus (Luke 19/1-10) is a classic restorative justice story. He was a head tax collector, who operated around the border and farming areas of Jericho, collecting taxes by means of agents. He had betrayed the loyalty he owed to his people and had brought shame on himself, his family and his tribe. And he had got very rich at their expense. He was regarded as a great sinner and was much hated. Meeting Jesus transformed him. But change was not enough. In order to do justice, he needed to compensate for some of the damage he had done. He offered half of his possessions to the poor, even though the rabbis required only one fifth. He was also prepared to repay fourfold anyone he had exploited, even though he was legally required to only pay back one half. He went way beyond the legal requirement in his practice of restoration and healing.

Imprisonment is also condemned by New Testament teachings wherever it represents a power of death that is separate from and opposed to God. Such an interpretation helps make sense of the miraculous nature of the deliverance of the apostles from prison in two instances, Acts 5 and Acts 12. The releases are an assertion of divine authority over the authority of the State and over the fallen principalities and powers, which include death in other forms like illness, hunger, injustice and opulence. The proclamation of 'liberty to captives' does not relate simply to a notion of spiritual freedom.

² Exodus 21/23-25; Leviticus 24/19-20; Deuteronomy 19/20

Restorative Justice as a Parallel System

The history of restorative justice is really found in the history of the world's peoples. Most cultures have practiced it to some degree in the course of their history. Traditional cultural customs with entrenched restorative traditions can be found in every indigenous culture, including the ancient Jewish culture of the bible.

These societies required offenders to take responsibility for their offending and wherever possible to make amends to victims. This enabled community justice to be practiced and peace to be maintained. For example, in the islands of the Pacific region which were enclosed by water, there were usually no prisons. The whole family took responsibility for the offending of one member. Reparation became their problem as well as that of the offender.

With the advent of colonisation, restorative traditions were seen as backward and the law of the coloniser prevailed. This was usually based on retributive justice built on punishment and vengeance rather than reparation and reconciliation. Since the colonisers were mostly European - British, Dutch, Spanish, Portuguese, German - so was the law that accompanied them. Since much of this law had been built up during times of monarchy when the king 'had the divine right to rule', so it was heavily into punishment as its means of maintaining social control. Since all the European colonisers were largely formed by the Church, so the teachings of Scripture and the Church became distorted and tainted by the close identity of the Church with the various colonising powers.

With the separation of the powers of Church and state now universal, and with the current criminal justice and penal systems now wracked with injustice and failure, it is timely to revisit restorative justice traditions and adapt them to modern conditions.

This has already been going on now for many years. It is believed the first modern restorative process took place in Ontario, Canada in May 1974. Since then more one thousand projects have been developed in more than 20 countries. Essentially the models adopt a communitarian approach involving either a facilitated conference, which brings victims, and offenders and support people together, or simple victim/offender facilitation. In 1989, New Zealand became the first country to legislate the process by means of a Family Group Conference to be applied to all juvenile crime. So well has this legislation worked, New Zealand has now become the first country to officially pilot adult restorative conferencing. Up to 1200 cases involving all sorts of criminal offending are being trialed over three years. It will be developed parallel to the traditional process. The results will be compared to a similar number of cases conducted under the retributive system. Clearly restorative justice is here to stay.

The idea of including compensation, reconciliation, healing and forgiveness in criminal justice processes is more than merely corrective or simply window dressing. Such elements reflect a whole fresh way of approaching criminal offending in the community. They present a vision of improving life right throughout the community, and of making justice more accessible, effective and fair.

The restorative process offers tremendous advantages over the retributive system. Five stand out:

1. Restorative justice is indigenous to most cultures.

In countries like Australia, South Africa, New Zealand, Canada and Ireland, which are all seeking to shape new independent identities and discard the worst effects of either oppression or colonial history, the reshaping of the processes of law is an essential dimension and sign of a developing maturity and sense of identity. Each of these countries has an indigenous tradition of restorative justice. There is certainly no logical reason - except vested interest - why the best elements of the indigenous traditions of these lands could not be applied to criminal offending. Such traditions have much to teach western countries. Such wisdom and practices would leave us all the richer

2. Restorative justice places victims at the centre of the justice equation

Under the current retributive system victims are either excluded or placed on the periphery. How much of the punitive wave of anger that sweeps a community after a particularly nasty crime flows from the unresolved anger, grief, hurt and pain of the victims of crime, their families, their friends? Most of us initially feel like acting violently against a thief who has taken our car or burgled our home. But our emotions settle with time and we all know that such a lashing-out would probably do as much damage as the original crime and would not solve anything.

3. Restorative justice offers healing and forgiveness to all involved

The dictionary defines forgiveness as a process of ceasing to feel resentment against another. It includes the idea of giving up one's natural impulse to strike back and exact revenge. That is often a very difficult thing to accomplish, particularly in a culture that is staunch and macho in its philosophy. 'Don't get mad, get even' is symptomatic of the philosophy of our modern consumer culture. It reflects the philosophy of revenge.

For victims of crime, forgiveness is letting go of the power that the offence and the offender have over them, while not condoning or excusing that person. It means no longer letting the offence and the offender dominate. Without this experience of forgiveness, without this closure, the wound festers and takes over our lives. It, and the offender, are in control. Real forgiveness allows one to move from victim to survivor.³

Forgiveness is not something that the victim primarily does for the benefit of the offender. It is the process of the victim letting go of the rage and pain of the injustice so that he or she can resume living freed from the power of the criminal violation. Thus the victim is the principal beneficiary.

4. Restorative justice places responsibility for crime in the hands of those who commit it

Restorative justice brings a dimension of community responsibility into being. It recognises that we all form part of the one human family and that we have responsibilities towards one another. To focus always on the individual as if we always exist outside a social grouping is to focus too narrowly. It is one of the great weaknesses of the Western judicial system. With restorative justice, the offender takes responsibility for the offending and seeks, wherever possible, to repair the damage done. Thus accountability and reparation sit at the heart of restorative processes.

5. Restorative Justice employs non-violent peacemaking processes

Restorative justice is a movement of non-violence. It provides a mature human response to complex situations of conflict and crime. It does not necessarily provide a solution to either. But it is a process that respects those involved and enhances the families and communities to which they belong. It recognises that violence is unacceptable and provides a non-violent but challenging and positive way of proceeding. In so doing it draws on a rich legacy of non-violent peacemaking which was spearheaded in Aotearoa/New Zealand in the 1870s by Te Whiti o Rongomai and Tohu Kakahi and the people of Parihaka. This was built on in the following century by leading figures such as Archibald Baxter, Ormond Burton, James K. Baxter, Jean Stewart, Alan Nixon, Elsie Locke, George Armstrong, Pauline Tangiora, Alyn Ware, Katie Dewes and Yvonne Duncan.

Restorative justice appeals to the enlightened better side of human nature and not the fearful vengeful dark side. It is a movement of hope, for victims, offenders and the community alike. In a majority of cases, it is simply a better way of achieving justice.

Restorative justice should be welcomed as a genuine breakthrough in the resolution of conflict and in the promotion of justice. It is justice that matters, justice that everyone wants. Restorative processes will deliver better justice. The processes of engagement between victims and offenders are in their essence non-violent and peaceful. At its best, restorative justice is peacemaking at its most basic level - a process of accountability, healing, restoration, forgiveness and reconciliation in the local community. Using skilled facilitators, it can transform the lives of all who participate.

Conclusion

Restorative justice is here to stay. More and more countries are conducting trials and experimenting with ways to better produce justice for offenders, their victims and the community. That it has biblical origins and is supported by the main thrusts of Church moral and social teachings makes it a particularly important issue for Christians. It is truly a Christian option for our time, a new divine insight that God calls us to practice today in the light of the Gospels. As such, it is one we can no longer ignore.

³ Howard Zehr, *Changing Lenses*, Herald Press, Scottdale, Pennsylvania, 1990