

RESTORATIVE JUSTICE - A LIGHT IN THE DARKNESS

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Introduction

Whenever one speaks about the destructive nature of imprisonment and the unfairness of the current criminal justice system, the catchcry goes up, 'Yes we know that - but what alternatives are you proposing?' It is a reasonable request. The truth is that there are many options that provide more constructive ways of dealing to most criminal offending. They do not require widespread use of imprisonment. They are effective and non-violent and generally cheaper. What they do require is patience, skill, resources and a whole new mind-set to enable their development. It is a fresh set of processes and values that sits at the heart of the Church's mission to the world.

Punishment, the Heart of the Problem

At the heart of the problem current lies the issue of punishment. Punishment has become an obsession in many countries. A criminal justice system built primarily on a philosophy of vengeance and punishment does not produce fairness, either to victims or the offenders. We need to ask some fundamental questions about these matters. Given the incredible failure rate of the current retributive system, with between a 60-80 percent recidivist rate within two years of release, should punishment remain the primary focus of the criminal justice structure? Are we wasting millions of dollars on a self defeating system which hits minorities unfairly, dehumanises those caught, and simply guarantees more crime?

An important way of seeking better justice and enhancing the Common Good could be achieved by adopting more community based options including victim/offender reconciliation, networks of habilitation centres and widespread use of restorative justice processes. By deliberately trying to repair the damage done through offending, and by bringing personal responsibility, apology, healing, mercy, even forgiveness and reconciliation to a process, a more positive result for society surely is possible. No one claims that it would work every time. Many offenders will not be interested in a more demanding system than they are used to. There will be many irresponsible people who will fail to co-operate. Some will even seek to sabotage the process. But if we believe people are basically good and not evil, that they have a 'better side' to their nature, that they are capable of virtue, and that a 'carrot and stick' approach is usually better than simply to use the stick, then we must hold that adopting a restorative philosophy creates more opportunities for change than the current system provides. It is a system that offers hope, recognises the dignity of all involved and treats people with respect. As such, it will enhance the dignity of all who come into contact with it.

Restorative Justice - How does it work?

Restorative justice is a philosophy that embraces a wide range of human emotions including healing, compassion, forgiveness, mercy, reconciliation as well as sanction when appropriate. It also recognises a world view that says we are all interconnected and that what we do be it for good or evil has an impact on others. Restorative justice offers the

process whereby those affected by criminal behaviour be they victims, offenders, the families involved or the wider community, all need to have a part in resolving the issues which flow from the offending. This provides a recognition to a degree at least that all things are interconnected.

Restorative justice cannot, of course, solve the systemic issues created by class, race and gender divisions. These belong to wider communal efforts that seek to bring about equity and justice for all through transformative justice. Restorative justice does however play an important element in this transformative process. It can be used from situations in kindergartens and individual homes, through schools and communities, to the course of action followed in South Africa with the Truth and Reconciliation Commission, where a whole nation sought to be healed and reconciled to a criminal past.

Where crime is involved, under restorative justice victims and offenders assume central roles and the state takes a back seat. The process does not focus on vengeance and punishment but seeks to heal both the community and the individuals involved. It seeks the common good of all concerned. **This is done by putting the notion of reparation, in its widest sense, and not punishment, at the centre.**

The goal of restorative justice is to heal the wounds of every person affected by an offence. It obviously requires the co-operation of all parties to progress fully. The offender, to be involved in any useful way, must acknowledge responsibility for the crime committed and express honest regret. More than that, the full implications of the offence need to be spelled out and confronted, as the offender deals with the causes of offending and, where possible, makes restitution and gives concrete evidence of more responsible behaviour. If the offender does not wish to co-operate, the traditional system should remain as a parallel option.

The victims are invited to examine their feelings and take advantage of any support network which will facilitate healing. Victims are helped to see that their own victimisation is only intensified by feelings of retributive action against the offender. When possible, they are invited to become involved in a facilitated group process, along with the offender and community representatives.

The New Zealand experience indicates that the Restorative Justice Conference (also called the Community Group Conference) is the best method of achieving restorative justice. While community panels and other forms of restorative justice are effective, the most lasting results come from the conferencing approach.

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

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

Under the current retributive system victims are shoved either right outside or stuck on the periphery. How much of the punitive wave of anger that sweeps the country after a particularly nasty crime flows from the unresolved anger, grief, hurt and pain of the victims of crime? We all initially feel like lashing out at a thief who has taken our car or burgled our home. But our emotions settle with time and we all know that such violence would probably do as much damage as the original crime and would not solve anything.

In New Zealand we have practiced restorative justice conferencing for youth offenders under 17 years of age for the past 10 years. This process involves a meeting convened by a skilled facilitator to which the victims and the offenders are invited. Both are encouraged to bring family and friends as support. The experience of our youth justice system offers us some positive insights. The number of young offenders appearing before the courts has dropped from 13,000 cases a year to 1800. Clearly the rate of young people undergoing custodial sentences has also shown a dramatic reduction. Restorative conferencing among the young is obviously having some success. Given the opportunity, it is amazing how contrite and shamed so many young people become after meeting their victims at what is called a family group conference. It is also noticeable how forgiving, gracious and helpful so many of the victims are towards the offenders once they have been able to put a human face and history on the crime.

There is a need often for victims to speak to their feelings, to be acknowledged, to be offered apology, to receive restitution, to experience justice. They need answers to questions that plague them such as who was at fault; so often victims blame themselves. But above all else, victims need the experience of forgiveness.

2. Restorative justice offers healing to all involved

I often draw people's attention to the case of Father Michael Lapsley, an Anglican priest who was a victim of a South African state security letter bomb. It blew off both of his hands, he lost an eye and had horrendous internal injuries, which still plague him today. If anyone had reason to feel embittered he did. But he is a brilliant model for those who seek to deal with the effects of crime in their lives and the need for victims to work towards forgiveness.

After the bombing, I was as helpless as a new-born baby for three months. There was literally nothing I could do for myself. But I also said to myself that my struggle now is a struggle to get well, a struggle to return, a struggle to live my life fully, as joyfully, as completely as possible, and that would be my victory. I also realised that if I was filled with hatred, bitterness, self pity, desire for revenge, that they would have failed to kill my body but would have killed my soul, and I would be a permanent victim. Today I would say that I see myself not simply as a survivor, but I am a victor over evil and hatred and death that apartheid represented, a sign of the triumph of good.

When it comes to forgiveness, I would say this. Forgiveness does not come cheaply. In South Africa, we sometimes try to make it something glib, cheap and easy. Forgiveness is about confession, about remorse, about amendment of life, about reparation. That is why I believe in restorative justice, not retributive justice. If someone says to me, 'I am sorry I did that and I want to make some sort of amends. I would say, of course I forgive you'. 1

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. 2

Just as victims need an experience of forgiveness, so do offenders. How else can they put the past behind them and positively confront the future? The retributive criminal

philosophy provides little encouragement and virtually no room for an offender to confess, repent, change direction, turn life around, admit responsibility and make things right. The justice system simply encourages anger, rationalisation, denial of guilt and responsibility, feelings of powerlessness and dehumanisation. As with victims, the wounds just fester and grow. 3

Forgiveness is not something that the victim 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. We encounter injustice daily in our homes, our places of work and in the affairs of nations. We can ill afford to respond to the grievances, large or small, in ways that are likely to escalate conflict and perpetuate cycles of violence. In many situations it is precisely the quest for justice as retribution that prevents many grievances from ever being channelled into forums that can bring resolution and redress. Limiting justice to retribution turns interpersonal disputes into tit-for-tat feuds, and border skirmishes into fully fledged wars.

3. 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 grouping at work, at home, in the community, in a sports club - wherever - is to focus too narrowly. It is one of the great weaknesses of the Western judicial system.

Sheeting home responsibility for criminal behaviour to the individual in the context of family and friends usually brings massive shame and regret to offenders. How often have I sat in jail and talked to burglars who had done 20, or 30, or 80 burglaries, and still have no comprehension of the damage done in peoples' lives? To them it is simply property stolen to feed their families, their drug habits, or their greed. It is the same with most other offenders. Only a tiny percentage ever face the reality of what they have done.

Their general approach towards a system that treats them like schoolchildren is that once their punishment is done, there is no more need to worry. 'I've done my time' becomes their catch cry. They have had their 'just desserts', says the state. They have paid their debt to society. There is clearly no room for either victims or positive change in such a scenario.

4. Restorative justice is indigenous

All indigenous cultures had restorative processes in practise for thousands of years prior to being colonised. Traditional indigenous law was not an isolated set of rules but grew out of and was inextricably linked into the religious and hence everyday framework of life. Law reflected the relationship of the people to their gods and with their ancestors. Indigenous peoples lived with the law, not under it. Widespread use of restorative processes will not be something new if instituted in countries which have been colonised in recent centuries.

The ancient Hebrews also saw justice through a restorative lens. Making wrongs right, repairing the damage done, giving justice to orphans, widows and the poor were all seen as a corporate responsibility requiring the restoration of the aggrieved party.

5. Restorative results are better for all - victims, offenders, the community

Victims consistently report their appreciation for having the opportunity to tell their stories and to confront offenders with their sense of injury, anger and outrage. Responses by offenders show more frequent acknowledgment of guilt, deeper appreciation for the consequences of their wrongdoing and a greater sense of remorse. The statistics from carefully monitored evaluations of a variety of programmes evidence the extraordinary success of victim-offender mediation and the validity of its claims of its proponents. 4

A Shift in Focus - the Restorative Option

What then are some real alternatives for our world poised on entry into a new millennium? There are four that readily come to mind which, if expanded and properly resourced, would reduce re-offending, produce better more healing results for victims, offenders and the community and be much more affordable.

The first is diversion. In Japan, two thirds of all arrested people are diverted. They never come to court. Other options involving apology and restitution are taken. Diversion is a real option for any country seeking to cope with its criminal justice processes more fairly. The notion that everyone should be punished with further penalty other than the shame that comes from arrest does not always meet the criteria for justice. To divert people away from the criminal justice system at an early stage can for many be the salutary lesson they need. To offer others an option for apology and the opportunity to make a voluntary contribution to the community through payment or community service are other positive options.

New Zealand has a diversion scheme for first offenders run by the police. While the police are probably not the best agency to run such a scheme, in New Zealand it seems to work well and prison chaplains have encouraged its expansion.

The price of criminalising so many is something we need to look at seriously. Even when people have broken the law, why do they always have to be prosecuted and criminalised? What positive purpose does it serve? What are we trying to do with such an approach when there are other ways that could have more positive results for all concerned?

The second is the promotion of habilitation centres. Habilitation, derived from the Latin word *habilitare*, meaning to equip, to empower, is a philosophy concerned with providing the necessary qualities, skills, self confidence and levels of achievement necessary for people to adequate and socially responsible lives in today's world. The vast majority of offenders within the criminal justice system have been denied, often through circumstances beyond their control, the opportunity to achieve such levels of capability and proficiency. Most come from backgrounds of considerable deprivation which include a measure of poverty, sickness, broken family relationships, unemployment, physical and sexual abuse, and drug and alcohol addictions.

The philosophy of habilitation offers direction and flexible responses to the complex issues that criminal offending generally entails. Programmes and centres which provide habilitation are a genuine Christian response to issues of crime and for many will provide a positive way of grappling with the causes of offending for many. Offenders should become eligible for placement in an habilitation centre shortly after sentencing if they are suitable and wish to go. The end of a prison sentence is too late. The incentive is gone, the damage

done. These centres could focus on such issues as drug and alcohol dependencies, sexual aberration, male and female violence, driving addictions, and the propensity for large scale theft and fraud. Wide ranging skills could be included in any habilitation programme conducted in such centres.

The third is the development of victim-offender facilitation. This speaks for itself and is an obvious way forward in helping offenders come to terms with the effects of their anti-social behaviour and is a limited process enabling crime to be dealt with in a constructive and positive way, in accordance with the teachings of the Scriptures and the Church.

The fourth is restorative justice for adults. After 10 years of practice in New Zealand and Australia, we know restorative justice conferencing works for young people. The secret of its success with them lies in the 'carrot and stick' approach which forms part of restorative philosophy. The key to this is the fact that all participants work out a recommended conference plan to which all must agree if at all possible. This is the incentive, the carrot, which encourages offenders to front up and take responsibility for what they have done. They get the chance to participate in a reparative outcome. We all need incentives to encourage us to change. Given their backgrounds, how much more do the majority of offenders need them.

The principle incentive for victims lies in a recognition and acknowledgment of the pain they have undergone. They get to hear an apology and to hear answers to basic questions like 'why me?' and 'will it happen again?' Under the current retributive system, victims get virtually nothing.

The key to successful conferences and change involves participation and encounter between the parties. It is the dynamics of the group which provide the energy for the whole process. Anything which impedes this basic movement reduces the chance of real responsibility being taken by offenders, which in turn inhibits the possibilities for real change and future accountability. Within the actual conference itself and the dynamics of it lie the greatest potential for real change and growth. This is why professionals other than the facilitator need to take a subsidiary role.

Year of Jubilee

A final note about the Year of Jubilee and to its specific relationship to our work. As you know, the Churches have declared the year 2000 to be a Year of Jubilee. The Year of Jubilee is an ancient Judea-Christian tradition celebrated every 50 years and stretching back more than 3000 years in history. The Book of Leviticus, Ch 25, says *You shall hallow the fiftieth year and you shall proclaim liberty throughout the land to all its inhabitants. It shall be a Jubilee year for you.* Jesus confirmed that the themes of Jubilee would be part of his overall teaching (Lk 4).

Among the themes of the Year of Jubilee were the restoration of right relationships, the freeing of those in captivity and the cancellation of all debts. They are based on a belief everyone should be given a fresh start and the need from time to time to step outside the usual laws governing society and think laterally, so that compassion, justice and generosity could be better practised. Currently, there is a huge movement internationally called *Jubilee 2000* which seeks to wipe the debt to foreign banks of certain indebted Third World economies so that those countries might make a fresh start free of debt in the new

century.

So it should be for prisoners who are 'paying their debt to society'.

Jubilee is a concept founded on the best traditions of justice and mercy, which flow from the very nature of the Divine, present in our midst. The opportunity created by the pending Millennium celebrations is a unique one in our lifetime to implement one of God's tools of forgiveness and reconciliation.

Prison chaplains in New Zealand have called for the Year of Jubilee to be celebrated on the one hand by providing an **amnesty for prisoners** serving less than one year in prison, or two years if they are women with dependent children, and on the other, **by the promotion of restorative justice** more widely among adults, as a millennium blessing for both victims and offenders.

Conclusion

Restorative justice options are not easy. But they do sit at the heart of the Cross and at the doorway to the Empty Tomb. They are life giving and should be at the heart of the Church's response to crime. As the New Zealand Catholic Bishops said in their pastoral letter

An essential part of the Christian message is the concept of forgiveness, mercy and healing, leading to reconciliation. Practice entails the changing of people's hearts from anger, bitterness, hurt and resentment to hearts of compassion, healing and mercy. Even the worst of offenders remain children of God, redeemed in the blood of Christ. It is our opinion that victims need to be more actively engaged in the criminal justice system, provided that healing and reconciliation are the focus of such engagement. Restorative justice processes for adults would offer a more positive focus and would guarantee a healthier, fairer and more positive form of criminal justice. 5

We desperately need a system that gives a better deal to victims, that promotes apology, healing, understanding, accountability, personal and collective responsibility, forgiveness, even reconciliation. We need to re-learn how to practise compassion and mercy in our dealings with one another. We need a system that reduces imprisonment and only uses it as a final resort for the most dangerous offenders. Restorative justice processes provide opportunities for these to happen. The current criminal justice system doesn't.

The nations of the world desperately need new enlightenment and fresh direction in their dealings with crime and lawlessness. Jesus has taught us the values and promises us the grace to speak to the dark shadows of the criminal justice and prison world. The Church is called to provide that light. If we take seriously Christ's mandate and witness to it 'in season and out of season' regardless of vested interests, the Church can still provide the leaven which could help redeem these 'structures of sin'. The common good of all would be enhanced, better social justice delivered, safer communities built. Of such is the Kingdom of God.

Footnotes

1. Rev. Michael Lapsley, Submission to the Commission for Truth and Reconciliation, 10

June 1996

2. Howard Zehr, *Changing Lenses*, Herald Press, Scottdale, PA, 1990

3. *ibid.*

4. John Haley, *Crime and Justice Network Newsletter*, Mennonite Central Committee, Akron, PA, September 1991

5. Pastoral letter, *Creating New Hearts - Moving from Retributive to Restorative Justice*, New Zealand Catholic Bishops Conference, September 1995.