

Restorative Justice - The Christian Option

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

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.

Prisons are the dinosaurs of the modern age. They fail on practically every front. Ten stand out. They **fail to rehabilitate**. Nearly eighty percent of inmates re-offend again within a short time. They are extremely **expensive**. Basically it is money wasted. They can **fatally undermine family life** and leave children minus a parent. They are **spiritually bankrupt** in that they suppress the growth and freedom of people. They help **create more crime** by bonding similarly minded rejected members of society. They upskill their graduates in **further anti-social techniques**, which makes prisons the most successful tertiary institutions in any country. They **breed violence** and are the principal recruitment locations for gangs. They guarantee continued **high rates of re-offending**. They **punish the innocent** especially partners and children. They can **stigmatise** offenders and families forever. They fail in practically every positive human indicator scale. 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'. Yet we keep building more. In terms of community usefulness and the promotion of the Common Good, they are a systemic failure. The penal system stands condemned by its own violence and unfairness. Indeed by its own inhumanity.

There are unquestionably a 'dangerous few' who need to be kept out of circulation for the safety of both themselves and the community. But these would need to be only a small portion of those currently incarcerated, perhaps as few as 10 percent. These should be kept in humane containment and encouraged to make constructive use of their time. Otherwise, non-violent constructive alternatives should be used to deal more positively with offenders.

Crime is prevalent in every country. It has to be confronted and dealt with. That is not an easy task. So often the effects of offending on victims are ignored. The current retributive criminal justice processes don't help. For example, how often have prison chaplains sat in jail and talked to burglars who had done 20, or 30, or 100 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 to react like schoolchildren. Once their punishment is done, there is no more need to worry. 'I've done my time' becomes their catchcry. 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 by offenders in such a scenario. Herein lies the crux of the problem.

Church Response

In dealing with issues of crime and law and order, the Church has to proclaim the age old message that Jesus came to bring the world: 'Good news to the poor, liberty to captives, new sight to the blind, healing for the sick, freedom for the oppressed.' That is our mandate. The teachings of Jesus can bring new light to bear on the difficult issues of conflict and crime in the community. They offer grounding principles to deal with them. These principles will include promoting processes based on justice, equity, fairness and accountability. Such an approach should always be guided by wisdom, tempered by mercy, and allow for the possibility of healing, forgiveness and reconciliation for both victims and offenders.

This is our Good News. To actively promote these teachings and values is the only reason for the Church to be involved in these areas. If Christian ministry and prison chaplaincy are to have any validity, then they must offer something different to what 'the world' or 'the system' offers. If we say with Peter, 'You are the Christ', then we are accepting the possibility of the transformation of relationships and the redemption of 'the world', including the criminal justice system. By definition, this means our ministry must be rooted in gospel truths. Only Christians imbued with the Spirit of Christ will be able to see Christ in the prisoner. It is the Christ in us that will see Christ in

them. We should have no expectations that governments or bureaucracies will see Christ in the prisoner. We have no reason to believe they share much of our understanding of justice. All the evidence is they don't. Our faith teaches that they won't. Hence the imperative for prison ministry to be distinctive and hope filled.

In his 1988 encyclical *Sollicitudo Rei Socialis*, Pope John Paul II wrote of the conditions which prevail to produce what he called 'structures of sin'. He was referring to social systems which enslave or oppress people and attack the Common Good. These 'structures of sin' are found where people are crushed, marginalised or oppressed and are denied the opportunity to develop their God-given gifts. Can we not say that the development of the modern prison industrial complex is such a 'structure of sin'? How can we as Christians stand in solidarity with the poor and their victims, speaking justice, development and peace, when so many are being crushed by such structures? Indeed, do we need to question the very legitimacy of prisons themselves? This is a fundamental question we need to consider.

Another fundamental question we need to ask is this. Does the Church, through its traditional work in chaplaincy services, support and succour this sinful system, or seek to transform it? Does our ministry focus exclusively on individuals or include the prison environment in which they are placed? Does prison ministry sit snugly in the bosom of the prison system, or stand with a distinctive transforming message? Are we being true to the teachings of Christ and our own professed faith, or not? These are very practical issues the Church needs to face in the light of the burgeoning number of prisoners and prisons worldwide. There are now more than 8 million people in prison. Every study shows it is primarily God's poor who are incarcerated.

Biblical Justice

For the past 800 years if not longer, Western civilisation has been built on underlying Christian moral principles which have guided the way we live. In their simplest form they were summed up by the Ten Commandments of the ancient Hebrew Scriptures and the central command of Christ that we were to love God and our neighbour.

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.

In the Scriptures, justice is revealed as part of the very essence of God. This can be seen from reading the psalms and the prophets, especially Isaiah, Jeremiah, Micah, Ezekiel and Amos, and especially from reflecting on the four Gospels. As theologian Kevin O'Reilly says:

In the Bible, God is called the just one. What is this justice of God? According to the authors of the Hebrew Scriptures, the justice of God is not the quality whereby God rewards the good and punishes the wicked. God is just when he intervenes in the lives of the underprivileged, especially orphans and widows, to save them from the injustices of men (Deut10/18). God is just when he defends the cause of the innocent. God is just when he re-establishes those who have been exploited by wicked men. God is just when he saves the poor.¹

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.

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

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. 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 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.

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.

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. Reconciliation, then, is at the heart of the New Testament understanding of justice.

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 - indeed God teaches - 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.

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.

RESTORATIVE JUSTICE - A PARALLEL SYSTEM

Christians are called to combine biblical insights with Church moral teachings to help them make an appropriate response to crime and criminal behaviour. Throughout the world, practitioners and moralists alike are looking again at restorative justice as a fairer and more just way of practicing criminal justice.

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 to the criminal process. 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 will be 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. Four 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 would appear to include the idea of giving up one's natural impulse to strike back and exact revenge. It 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.

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. I believe 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.