

## **Ghandi's Justice and Restorative Justice**

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*Introduction.* There is something so very special about being present here at the Church of the Fellowship of All Peoples, with Dr. Dorsey Blake who auspiciously dons Dr. Thurman's robe, with master musician Dr. Carl Blake, with Rev. Kathryn Benton, Ms. Gayle Orr-Smith, and here with all of you, within these walls, in this space. History pervades the space here—as if I could be at the 16<sup>th</sup> Street Baptist Church in my hometown of Birmingham, or in the Dexter Avenue Baptist Church in Montgomery or Ebenezer Baptist in Atlanta, or Holt Street Baptist in Montgomery. The legacy of Dr. Thurman, Dr. King, and Ghandi feels so palpable, so alive here. It is as if I have come to their home. As I speak to you, this unfailingly inspires me to invoke their spirit and their wisdom and to pray that I might do so in ways that honor them.

Judge Thelton Henderson too belongs right alongside these great beings. He is the counterpart of Dr. Thurman and Dr. King in the arena of the justice system. As a jurist, he is in the direct lineage of Justice Thurgood Marshall, and truly, it is *he* who is the rightful contender to the vacancy on the U.S. Supreme Court. I am doubly honored to be present at this convocation which honors him with the Thurman Award.

***Ghandi's Justice.*** When I delivered a sermon here two years ago on justice, I started out with Dr. King's vision of justice. Today I start with Ghandi's: "That action alone is just which does not harm either party to a dispute."

What are the philosophical foundations of the Ghandian vision of justice? This do-no-harm approach to justice is rooted in the Hindu principle of ahimsa. Ahimsa means non-violence, doing no harm to anyone, even and especially not to those you consider enemies. Ghandi equates love with Ahimsa:

If you express your love- Ahimsa-in such a manner that it impresses itself indelibly upon your so called enemy, he must return that love. ...And that requires far greater courage than delivering of blows.

Like Dr. King's, Ghandi's vision is of a justice grounded in love. You will recall Dr. King's words:

... [J]ustice is really love in application. Justice is love correcting that which would work against love. Standing beside love is always justice.

Ghandi's conception of justice as Ahimsa flows from Hinduism's fundamental principle affirming the interidentity and interconnectedness of all beings. This is common to eastern religious thought in general, and also to indigenous worldviews. We are not atomistic, solitary individuals with no inherent interrelatedness, separate from each other and from the rest of creation. In the West African Ifá tradition, we all share *aṣe*, a Yorùbá word connoting the universal, spiritual energy pulsating throughout all of living creation. The Sioux would say "Mitakye oyasin". We all related. We are one. All living beings exist within a luminous web of mutuality and interrelationship. This ancient view of the universe is a view shared by modern physics. We are all relatives. This suggests an *ethos* in which each is responsible for self, for one another, and for maintaining harmony and balance in all our relationships. Indeed, under this doctrine, there *are* no enemies. Ghandi also acknowledged how deeply Jesus' Sermon on the Mount influenced his conception of justice.

This definition of justice is often critiqued as hopelessly utopian, unworldly, and unrealistic. It certainly is a far cry from the dominant punitive and retributive justice paradigm of today. However, it would be

grievous error to underestimate the power of this vision. First, Gandhi made a unique contribution to jurisprudence in that he took this bedrock principle of Eastern and indigenous spiritual thought, the principle of ahimsa, of interidentity, of our inherent interrelatedness, and he fashioned it into a theory of justice. Gandhi's vision of justice is an early impulse which catalyzes the evolution of our jurisprudence that it might begin to embrace and more accurately reflect post-Cartesian, post-Newtonian and current quantum understandings about the inherent interrelatedness of all life.

Gandhi's vision and practice of justice is not only a unique development in jurisprudence, but it also still resonates today as a great life teaching. Rather than curse the darkness, Gandhi's vision of justice as Ahimsa lit one candle which illuminated and changed the entire world. Rather than solely demand that others change, Gandhi *was* the change he wished to see in the world. He embodied love. And he embodied ahimsa. He not only embodied these principles, but he also inspired millions of others to do so in the arena of social justice. His vision of justice is not just a way of knowing, but it is a way of being. It is not just an epistemology but it is an ontology. Indeed Gandhi's vision of justice inspired a remarkable groundswell of activism and unstoppable social movements which scored historic civil rights victories for Indians in South Africa in the early 1900's

and which also led to India's independence from British rule in 1947. It inspired the early stages of the African National Congress' anti-apartheid movement in South Africa. And of course, it inspired and informed the strategies of the mass civil rights movement in the U.S. in the 1950's and 1960's.

One might say, "Well all that was in the past. No such movements exist today." And moreover, what *does* exist today is a punitive, retributive idea about justice which has spawned:

- A rapidly expanding—or more appropriately, metastasizing—prison industrial complex which houses the largest number of prisoners in the world.
- An almost 1000% increase in incarceration since the 1970's
- Torture-like conditions in prisons such as the Supermax panopticon gulags where prisoners are confined 23 out of 24 hrs per day, 7 days a week, and where they are subjected to such sensory deprivation that more and more suffer complete mental and emotional breakdown.
- A California Youth Authority where youth are kept in cages like animals.

- A situation where 2 of 5 African American male youth are ensnared by the criminal justice system.
- A situation where our schools become prep schools not for college, but for prison.
- On an international level, this very same retributive justice principle has also engendered genocide in Iraq in response to the 9-11 harm.

***Retributive Justice.*** What of the philosophical foundations of retributive justice? Today, the dominant idea of justice is based upon a sort of fundamentalist notion that crime is sin and the only way it can be atoned for is through suffering. And so this idea of justice focuses on just deserts, pain, suffering, isolation, deprivation, even death as the only thing that can right the wrong, the only way to pay back the debt to society, the only way to balance the scales, and to settle accounts.

The dominant idea of justice is also based upon a Roman, Aristotelian, somewhat question-begging notion of “to each his due”. The question begged is who determines what is due? And how? Justice is not blind—she often “peeks” to determine race, economic status, sex, and religion prior to determining what is due, as a legal scholar has noted. This is a vision of justice which purports to restore balance by inflicting more

pain. Far from refraining from harm, it is a justice based upon inflicting *more* harm to pay for the original harm. A justice which inflicts pain on top of pain.

Against this dismal backdrop, there are those who would say the Gandian notion of justice as doing no harm and Dr. King's vision of justice as love correcting that which revolts against love are no more than utopian chimeras. Harming *is* the *raison d'être* and essence of our current justice system—a system which exists precisely to judge, blame and punish. And a system which deliberately fosters hostile interaction between parties. This is a system driven through and through by coercion—the coercion of jails, guns, police, and courts.

However, in face of seemingly overwhelming odds, the Gandian vision of justice which seeks to repair instead of replicate harm is *very* much alive today. It is *very* much present with us today. It exists in the form of a rapidly expanding worldwide movement for restorative justice.

***Restorative Justice.*** Contemporary restorative justice practices arose in the early 1980's out of the general frustration of victims, offenders, communities, and justice professionals that our justice system's focus on blaming and punishing the offender creates more conflict than peace and

deepens societal wounds instead of healing them. Mennonites played a key role in the new development.

Rather than rely solely on the threat of coercion and punishment, restorative justice seeks to heal and transform the wounds of victims, offenders and communities caused or revealed by the wrongdoing. It is frequently based upon a fourfold process of: (1) Truth telling (2) Apology (3) Making Amends/Reparation (4) Reconciliation.

From primary dependence on the state and justice professionals, restorative justice seeks greater self-reliance in the community by involving all those with a stake in a specific offense to come together in order to heal and repair the harm as much as possible. Restorative justice helps to move from the sense of an individualistic “I” to sense of a communalistic “we”, and in so doing, strengthens communities. Herein lies our greatest security and protection from wrongdoing.

Rather than foster hostility between the parties, it provides an opportunity for those who harm and those who are harmed to empathize with one other. It allows the person responsible for the harm, and the community, where appropriate, to take responsibility for actions that led to the behavior resulting in harm. It allows the person responsible to make amends. And it allows the community to take steps to prevent recurrence.



Ultimately, it allows all parties, but especially the person harmed, to begin the process of healing.

Adversarial justice intentionally pits two opposing parties against one another in a pitch, zero sum battle to determine right or wrong, guilt or innocence, winner or loser. But in restorative justice, there are no sides. Parties come together in a circle with everyone focused on the same center: the center is the issue of how the harm is to be repaired. Rather than adversarial justice's win-lose principle, restorative justice is based upon a win-win principle. Restorative justice seeks a healing for all versus a victory for one.

We can't fully grasp what restorative justice is if we do not see that it invites a paradigm shift in the way do justice. In our culture, we are socialized from childhood to believe that retributive justice, the prevailing paradigm, is based upon the natural order of things. We're socialized to believe that the desire to inflict counterviolence upon someone who has hurt us or a loved one is natural. We're conditioned to think that humans have an innate response to retaliate and punish when we or our loved ones have suffered harm. Finally, we are socialized into believing that this is universal, that justice *has always been done this way, and it always will be.*

*Historical View of Justice.* In fact, far from universal or natural, this vision of justice is culturally and historically constructed. It is relatively recent historically. Retributive justice is less than 10 centuries old, arising around 1200 AD with the dawning of the nation-state and industrial era.

*As unworldly and utopian as it may seem to some at first blush, actually Mahatma Ghandi's and Dr. King's vision of justice is actually much closer to the way we have been doing justice for most of human history.* Though restorative justice is new to western jurisprudence it is not at all new in the sweep of human history. For most of human history reconciliation and restitution to victims and their kin took precedence over vengeance. This is because restoring social peace and avoiding blood feuds were paramount concerns. Punishment as we know it today was the exception rather than rule. Restitution and reconciliation, not punishment were the overarching concerns. Indeed, in most indigenous languages, there is no word for prison.

If you stole something or hurt someone then, you would pay restitution—for instance, in Africa, maize, palm oil, chickens, goats, cows. Since your family has to pay, you are subjected to the sanction of your family, exerting a corrective influence. Your wrongdoing is shamed—the

act, not you. You are urged to empathize with your victim, to acknowledge the wrong, apologize, make amends, and ask for forgiveness.

Even murder was not punishable by death in most pre-1200 A.D. societies. For instance, in ancient Zimbabwe, if you killed someone, you would have to pay 109 goats. If you had no goats, you would send a child to the family of your victim. If you didn't have a child, then an adult from your family would come to live with the family of the victim. This wasn't really analogous to a slave-master relationship, as the new addition to the family was accepted and free to marry into the new family and pursue a livelihood like everyone else. In ancient Syria when you killed someone, you would enter into the home of the survivors with your burial cloth draped around your arms in supplication, as if to say to your victims, I am already dead. Forgiveness usually follows. As with restorative justice, in indigenous justice, the focus is on repairing and rebuilding relationships, bringing about reconciliation and social harmony. The goal is to strengthen relationships by fashioning win-win outcomes. Justice is a healing ground, not a battleground.

Restorative justice views a vengeful and punitive response to harm unacceptable, because, first, on a social level, it sets into motion endless cycles of violence and counterviolence. Punishment, no more than

officially sanctioned vengeance, is a mere variant of the original harm. It replicates, reproduces, and multiplies harm, like a voracious, rapidly metastasizing cancer until we're almost totally consumed by it. An eye for an eye and a tooth for a tooth leaves the whole world blind and toothless as Ghandi states. It results in the destruction of community safety nets, ultimately leading to total social breakdown and disaster.

Secondly, on an individual level a punitive, vengeful response harms us psychologically. It locks us into the past. It immobilizes us because it tethers us to disabling definitions of ourselves. We define ourselves by the pain. We overidentify with it, mistaking it for who we truly are. Our attachment to suffering blocks the path to healing. Ultimately, rather than dissolve, the desire for vengeance magnifies, expands the pain. Rather than heal and allow us to move on, it keeps us locked in the past. We become a prisoner of our pain and our past. We are victimized a second time around, but this time we are our own abusers. It is scientifically documented that hatred and anger eats away at our well-being, on physical and emotional levels.

The good news is that forgiveness is getting so much attention these days. After 1600 years from the 5<sup>th</sup> century to 1970, only about 110 titles were written about forgiveness, and these were mostly religious texts. In the

last 15 years, there has been an explosion of publications on the subject. International conferences are being held. Forgiveness is being researched at the University of Wisconsin, at the Mennonite University in Virginia, and here in California, there is an Institute for the Study of Forgiveness at Stanford University. There is an International Campaign for Forgiveness chaired by Archbishop Desmond Tutu.

But I should say here that forgiveness is not *required* in restorative justice processes. We follow the lead of the victim. Even subtle coercion is inappropriate. In successful restorative justice processes, however, forgiveness often spontaneously occurs.

***Restorative Justice Today.*** Restorative justice's application is not limited to the justice system. It has been applied to address conflict in schools, communities, prisons, workplaces, and even in tribunals to heal wounds of war and mass social violence.

There are five basic models. First, Victim Impact Panels which bring victims to prisons to talk to non-matched offenders toward the end of affording the opportunity of offender transformation through the experience of empathy. Secondly, there are Victim Offender Mediation Programs which bring matched victims together with their offenders. For instance, the parent of a murder victim may meet with her child's killer at a prison. But

extreme care is taken in the arrangement of these meetings, and preparations often extend over period of years before culminating in the actual face to face encounter. A common outcome of these meetings is healing and transformation on both sides. The third model is the Family Group Conference. New Zealand is best known for this model where youth, their parents, family and justice professionals meet to determine how to repair the damage done in the wake of harm. The fourth and most inclusive model is the circle process, including the parties, their families, supporters, friends, justice professionals as well as community members at large, and anyone who has a legitimate stake in the offense. The fifth model is the Truth and Reconciliation Commission which is used in post-conflict contexts to heal the wounds of war and mass social violence.

In just 25 years, restorative justice has become a rapidly spreading global movement.

- There are approximately 1000 programs in North America. In Canada, the Saskatchewan province has a two tiered justice system, one criminal justice, the other restorative justice.
- Here in San Francisco, we have a very effective Victim Impact Panel at County Jail No. 7 in San Bruno. This program is featured in an

Oprah show on Restorative Justice which was aired last spring. I believe it was also featured on a Larry King Live Show.

- Thirty states have or are in the process of developing restorative justice legislation.
- There is a Restorative Justice Center at Fresno State.
- There are approximately 900 Restorative Justice programs in Europe.
- The European Union has an intergovernmental Restorative Justice Program.
- In 1999 the UN adopted a resolution urging member-states to use Restorative Justice and it subsequently developed Basic Principles addressing due process and other human rights concerns about restorative justice.
- Approximately eighty countries have some form of restorative justice.
- In 1989, New Zealand passed the Children, Youth and Their Families Act. Now New Zealand is closing its prisons down for youth.
- Colombia, South America is developing legislation to apply restorative measures to help heal the wounds of the intractable conflict there.

- 30 countries have used Truth and Reconciliation Commissions, of which, of course South Africa's is the best known. I will say more about South Africa's TRC momentarily.
- Finally in Oakland, where I reside, a recently formed group of community members, youth, lawyers, judges, elected officials, school officials and others are working together to develop restorative justice programs to reduce youth violence.

***Restorative Justice In Action.*** There are many inspiring stories to tell about restorative justice in action. But in the interest of time, I will be brief. And I suggest you screen the Oprah video so that you may hear more stories of a number of people who have gone through restorative justice processes. For now, I will tell you about Amy Biehl.

During 1993, on the eve of the elections, Amy Biehl, a white Stanford exchange student was working very hard to help midwife into existence the new South Africa. One night after having driven several black friends to their home in the Gugulethu township outside Capetown, a crowd shouting anti white slogans stoned and stabbed her to death. Later, four of her attackers were convicted of murder and sentenced to 18 years in prison. In 1997, Linda and Peter Biehl, Amy's parents, decided to support the amnesty petition the men presented to the Truth and Reconciliation Commission.



The men gave a detailed account of what occurred, they apologized to the Biehls, and they were released in July 1998. Two of them later met with the Biehls because they wanted to say more than what had been possible during the TRC hearings. One said, "I know you lost a person you love. I want you to forgive me and take me as your child." Two of them are now working with the Amy Biehl Foundation, established by Amy's parents after her death. In 2002 the two men accompanied the Biehls to NY to the American Family Therapy Academy on reconciliation and RJ. In a Boston Globe interview, when asked how she feels now about her daughter's killers, she responded, "I have a lot of love for them." After Peter Biehl died, Mrs. Biehl bought two plots of land for them in memory of Peter so that the two could build their own homes.

Though this story is indeed extraordinary it is not all that uncommon. Where restorative justice Goes, there also go stories of healing and transformation.

I will briefly illustrate the creativity of the sentences fashioned by circle processes with two examples. A young man is convicted of a crack offense and the case is referred to a community sentencing circle. After rounds and rounds of discussion, the community circle may sentence the youth to 100 hours rocking and taking care of crack babies in a local

hospital, finishing his GED, and community service with an anti-drug non-profit. (Typical procedure is that such sentences are recommended to the court, and the court approves.) Similarly, for a weapons violation, a circle might sentence the offender with 200 hours of being the personal attendant of a person who is rendered paraplegic from gunshot wounds.

*Outcomes.* Though neither a magic wand nor panacea, evidence shows that restorative justice has been quite effective.

Pursuant to the 1989 legislation, New Zealand's juvenile justice system is almost completely restorative. After passage of the law, prisons were being closed down. Only 11% youth offenders being arrested.

Recidivism studies are presently limited, because programs are so new and there are so many variables. But evidence indicates lowered recidivism. Studies of San Francisco's Resolve to Stop the Violence ("RSVP") have shown a 70% decrease in rearrest for violent offenses. (This does not reflect rate of rearrests for non violent offenses, however.)

In a Minnesota elementary school, the number of referrals for violence was reduced by 50%, and at a Minnesota high school, suspensions were similarly reduced by almost 50%.

Victim and offender satisfaction levels tend to be high. This is especially important since victims are invisibilized by the current system

which sees crime as a violation of law and not as injury against a person.

South Africa's Truth and Reconciliation Commission is a stunning case study in how restorative justice principles helped to transcend hundreds of years of hatred and violence in order to make the transition into a more stable, just order. South Africa is known as the miracle country, the rainbow nation largely for this reason. Countries from around the world are knocking at South Africa's door to seek technical assistance in reconciliation processes. This is not to say that the TRC solve all South Africa's problems. Far from it, reparations promised during the 1996 Truth and Reconciliation Commission hearings are yet to be paid, prisons akin to our Supermaxes are being built, and economic apartheid is yet to be dismantled.

Drawing on its indigenous justice traditions, Rwanda is using restorative justice- type processes today to heal the wounds of mass social conflict. Approximately 800,000 Tutsis and moderate Hutus were killed during the 1994 genocide. 115,000 were later jailed as genocide suspects. The country has revived its traditional court system known as *Gacaca*, which is a type of grass that grows there, to bring them to justice. In Gacaca courts, African villagers traditionally gathered on a grassy field to collectively resolve conflict, with elders presiding. Gacaca is an inclusive process which involves truth telling, apology, amends and reconciliation.

Again, though by no means perfect, Gacaca courts are proving to be effective alternatives. It has been estimated it would take Rwanda's European-styled formal justice system around 100 years to prosecute all suspects, while it will only take eight using the Gacaca courts.

Activists and scholars are just beginning to explore the possibility of using restorative justice to address mass systemic and historic wrongs in U.S. inflicted against both Native Americans and African-Americans. Actually, the first Truth and Reconciliation Commission in the U.S. has already been convened in Greensboro, North Carolina to attempt to close the still gaping wounds inflicted when members of the Ku Klux Klan and a Neo-Nazi group shot down five activists and wounded several more during an anti-Klan march in 1979. I cannot help but note the synchronicity here: Greensboro, North Carolina was also the site of the first department store sit-in, sparking the historic Freedom Rides and civil rights movement of the early 1960's. I understand that Bishop Desmond Tutu will soon be visiting North Carolina at the invitation of the TRC there.

***Conclusion.*** In conclusion, like Ghandi's justice and like Dr. King's justice, restorative justice is invitational. It invites a paradigm shift in the way we do justice. It invites us to transform deeply held beliefs about how we respond to wrongdoing and conflict. It invites into the circle of justice-

making all those affected by the wrongdoing. It invites and challenges us to call forth our highest selves, offering apology and making amends for wrongdoing, and forgiveness for having been wronged. Rather than curse the darkness—and there's clearly no dearth of it today—we are invited to light the candle of restorative justice. Like Ghandi's justice, like Dr. King's justice, restorative justice also invites and challenges us to *be* the change we wish to see in the world. Restorative justice processes afford us the opportunity to practice and meet the challenge.

You yourselves might light the candle of restorative justice by campaigning for programs here in San Francisco. It is befitting that you might do so from within this very church, from within these hallowed walls. This is my hope and my challenge to you. May you carry forth the justice legacies of Ghandi, Dr. King, and Dr. Thurman by becoming proponents of restorative justice, and by organizing to bring restorative justice programs for youth to San Francisco.

Cultural historian Charlene Spretnak has said that the idea that only separateness is real is the curse of modernity. The massive denial of the bonds our inherent interrelatedness is the ultimate cause of inter species and intra species disaster. The delusion of separateness has engendered not only suicide, homicide, and genocide, but has also pushed us to the brink of

biocide, the destruction of the earth's life support systems themselves. If nothing else, hopefully the tsunami, Katrina, Rita, the earthquake in Pakistan, and the mudslide in Guatemala will have the ultimate effect of breaking through mass denial and driving home for all the truth of our inherent interrelatedness, not only with one another, but with the Earth herself. And hopefully we will awaken to this truth before even harder lessons become necessary.

There is no way forward into the future until we restore the bonds of our interrelatedness. Restorative justice—the justice envisioned by Mahatma Ghandi and Dr. King—is the loom upon which the fabric of the beloved community is being rewoven. In its affirmation of our oneness and interrelatedness, restorative justice is a beacon which lights our way into a perilous future.