Restorative Justice

“Some Biblical perspectives”

PFI Toronto Convocation 2003

(An address to breakfast meeting organised by Prison Fellowship Canada)

In Dec 2000, the Secretary-General of the UN issued an invitation to member Nations to provide comment on a Declaration of Basic Principles for the use of Restorative Justice in Criminal Matters. This Declaration was before the Economic and Social Council having gained the necessary support (in revised form) at the 10th UN Congress on Crime Prevention held at Vienna in April of that year. The PFI Centre for Justice and Reconciliation played a major role in the drafting of the Principles, formulation of the Resolution and the garnering of support from the NGO sector. Canada led the charge from the member Nation sector. The point to be taken is that interest in Restorative Justice (RJ) is now universal and worldwide and at a level that is influencing national policies and law drafting. Why should this be?

It is because there is growing universal acknowledgement that the way we are responding to the problem of crime in our societies is not working. There is a mood approaching desperation to be found now amongst officials and policy drafters involved in criminal justice that has resulted in a real openness to consider different ways of dealing with crime. When traditional methods of punishment, most notably prison, do not reduce re-offending, it seems so natural to assume that the punishment was not tough enough and that something harsher is required. So the predictable and understandable public cry is for longer sentences, reintroduction of hard labour, corporal punishment and of course even the death penalty – retributive responses based purely on punishment.

Our present system is based on the familiar image of the blindfolded (symbolizing impartiality) Roman woman holding a set of scales in one outstretched arm and a sword in the other. On one side of her scales is the crime, and on the other there is the sentence which will be demonstrated by the sword - an equal but opposite punishment so that the scales balance. She represents the view that a terrible crime requires an
equally terrible response. R J challenges the assumption so inferred that justice is achieved and that a wrong is righted, by punishment alone.

In our current model there are two players - the offender and the state. Through the Courts, the State takes responsibility for protecting the elements of justice, and so the interests of a victim are deemed to be met by the punishments meted out by the Court. To date victims have been largely excluded from any direct consideration, because the State, in its denunciation of lawless behaviour, is deemed (through legal presumption), to be satisfying the needs of the victim.

The traditional common law theory of Court sentencing is said to be based on three foundation stones, namely:

retribution (or punishment for the individual)
deterrence (the message to the community at large in order to deter others minded to commit crimes)
rehabilitation (of the offender)

(See R v Goodrich (1952) 70 WN (NSW) 42.)

Common sense would assume that goals of a Criminal Justice System should put the interests of victims of crime as a priority, as well as rehabilitation of the offender, and so it is time an additional foundation stone was added to the above in order to remedy that obvious omission.

With more serious crimes which attract sentences of imprisonment, retribution and deterrence are self-evident elements (although there is doubt whether sentences of imprisonment are in fact deterrent) - but rehabilitation is only assumed to take place.

Consider the fairly obvious assumption that a person offends because of some problem in functioning responsibly within the community. For as long as statistics have been taken, sentences of imprisonment continually throw up figures that show a person who is sentenced to a reasonable term of imprisonment has something like a 66% likelihood of re-offending and being sentenced again to imprisonment, and after the second term of imprisonment, that likelihood goes up to around 90%. Such figures
suggest therefore, that imprisonment tends to debilitate an already dysfunctional person even more. The universal truth about sentences of imprisonment is that they do not rehabilitate.

Another reality about finite sentences of imprisonment is that an offender in due course is going to return to the community. The fact is, that the longer the term of imprisonment, the more debilitated an inmate becomes and he or she returns to society in due course more dysfunctional than they were at the beginning of the sentence.

As for victims, whilst some may be understandably gratified that the offender is put away, in real terms they do not benefit in any way. Imprisonment does not heal their scars or provide restoration to them for their material or emotional losses.

So, RJ asks the question - who is benefiting in such circumstances? Offenders don’t - because they re-offend and with increasing likelihood. Victims don’t - because their actual needs arising from the effect of the crime are not met. The only arguable benefit is in the outrage of society being met - denunciation for lawless behaviour. Yet the social cost of a system that fails to rehabilitate offenders or restore victims is immeasurable. Long non-rehabilitative prison sentences produce that more dysfunctional citizen who will re-offend and create more damage to another victim in due course and who will cost the community more for yet another prison term. The effect on victims often produces economic loss as well as dependence upon the State. Furthermore, the prison term may break up of the offender’s family with the result that the children are also likely to offend in due course, to say nothing of the cost to the taxpayer to maintain financial support for the offender’s dependants.

The needs of the victim are really at the heart of what the RJ model is all about, i.e. real and not fictional needs but needs that when met will achieve some restoration. Also at the heart of the model is offender accountability – the imperative that offenders see their behaviour for what it really is and take responsibility for it.

The RJ approach says, that while punishment for crime must have it’s place, the emphasis must be on healing the breach, restoration of the relationship, and the remedying of harm as far as this is possible. If therefore, an offender and victim can
meet in controlled circumstances with skilful professional facilitation, a result can emerge which has its own unique justice – a form of justice that is tailored to the particular needs and personalities of the victim and offender, and to the overall circumstances of the case, with better outcomes for the individuals concerned and better downstream outcomes for the community. The approach is really a search for justice with the state sitting on the sideline, thus permitting the parties to explore their own outcome in the pursuit of those features that the state simply would not address.

The need for a better way is desperate, because whilst crime produces destruction of relationships both at citizen and societal levels, a retributive or purely punishment response entrenches the destruction further.

There are Christians who vigorously advocate the eye for an eye and tooth for tooth approach of the OT (lex talionis) as the correct Biblical position to be taken in response to crime relying on the many passages that seem to endorse a retributive approach to offending and that refer to the death penalty. But not to be overlooked are countless other OT passages that highlight principles for a harmonious and caring community that if followed should mean there would be no need for the application of such penalties. Furthermore, meaning has to be given to the words of Jesus:

\[
\text{You have heard that it was said \textit{“eye for an eye, and tooth for a tooth"}. But I tell you, do not resist an evil person. If someone strikes you on the cheek, turn to him the other also. And if someone wants to sue you and take your tunic, let him have your cloak as well……...“}
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(Matt.5:38)

Jesus had very little to say about law and order and the problem of crime and even here He doesn’t elaborate much or evaluate the correctness of the OT way. In this exceptional passage Jesus refers to several well known explicit OT laws of punitive consequence, and immediately qualifies their application by the proviso “……but I tell you…”. Isn’t He really saying here that an eye for an eye and a tooth for a tooth is all very well – but there is a better way. Isn’t He really saying that to build our approach solely on the retributive model is too narrow and if we are to be truly insightful we must be prepared first to take on board the uncomfortable truths about
our own lives. Isn’t He really pointing out that if we look to law to live by, to define our community and to regulate our behaviour, then we will indeed get rules; we will indeed be governed by regulations. But if we look to principle to live by, we could be regulated by morality and ethics, with all behaviour being governed by one overarching law, described by Jesus as the greatest or most important, first to love God with all one’s heart, mind, soul and strength, and secondly to love one’s neighbour as oneself (Mark 12:30)

This is the better way, and the imperative it implies is that we are to live as reconcilers and not dividers.

RJ dreams of healing, bridge building and addressing dysfunction, and so we have to ask the question of ourselves – are we interested in such things? As a christian community I suggest that we should be more than interested in, but actually love the idea of achieving a more harmonious society – we should covet the goals of harmony and conciliation in our private, community and international relationships. Ironically though, too often the preferred passion of the christian community is love of and for retribution and punishment and therein is a problem, because a purely retributive response is simply a predictable rational but more seriously, rationalistic response. It is the response of the Godless and the merciless. Christians should be known for having an alternative approach to the issues of life, because difference is at the heart of discipleship. Everything I understand about the Scriptures tells me as does the Anglican prayer book that it is in the nature of God to always be merciful. Yet sometimes I think Christians believe it is their job to promote retribution on the basis that that would be what God wants. Shouldn’t the awesome responsibility for punishment and retribution remain with God and shouldn’t our awesome responsibility be to love, restore heal and reconcile?

Listen to St Paul:

*If it be possible, as far as it depends on you, live at peace with everyone. Do not take revenge, my friends, but leave room for God’s wrath, for it is written: “It is mine to avenge; I will repay,” says the Lord.*

(Rom 12:18)
The NT introduces a new covenant – or a simpler way of explaining the complexities of the old. The ethics taught in the Sermon on the Mount are woven with principles of mercy, tolerance and reconciliation – even with one’s enemies. Remember the injunctions to love your enemies, to turn the other cheek when struck, to walk an extra mile to meet someone’s need, to endlessly forgive those who wrong you – all of which are consummated in the greatest act of reconciliation demonstrated in the crucifixion of Christ. A society that expresses these attributes will be a just society with a desire to achieve reconciliation where there has been harm and dislocation. It would be a society that has a love for reconciliation.

Reconciliation and restoration of broken relationships is at the heart of the Gospel.

I suggest that a Christian community should indeed have this love and passion and should feel great sadness and grief at dysfunction that erodes community harmony because of crime. The Christian community like any other naturally has its right to feel anger and outrage at the destructive influence of crime, but a Christian community should go beyond that and be focussed on healing, repair and restoration. A community that loves only anger and outrage will be a retributive community and a retributive community will never be a healing community. Retributive attitudes destroy relationships further and will produce polarization and even encourage separatism without any sense of grief and sadness. So where is our sorrow? Where is our grief? Where is our repentance? Because it is from the crucible of those sentiments that the desire to do better will emerge. There must be a love of mercy.

Through the anxieties of prophets such as Amos it can be seen that gross selfishness and lavish lifestyles produced a community that was repugnant because of its hypocrisy, lack of social equity and cruelty to its weaker members. These communities did not care for the plight of its less fortunate people and had lost all sense of mercy and tolerance – yet they were religious. The poor were trampled, the courts were corrupted through bribes, people who told the truth were despised, merchants fixed their scales to give short measure and traded the poor as things to be bought and sold (Amos 5:10-12, 8:5-6).
Yet at the same time the privileged were constantly feasting and drinking – idle in their wealth, and making a great show of their religiosity (Amos 6:4-6). The prophet writes:

\[I\text{ hate, I despise your religious feasts;}
\text{I cannot stand your religious assemblies.}....
\text{But let justice roll on like a river,}
\text{Righteousness like a neverfailing stream.}\]
\text{(Amos 5:21,24)}

These were shameful days portraying a society that had no interest in harmony, that had lost any sense of tolerance and respect and perhaps most seriously, had lost all understanding of mercy. It was a society that needed reconciliation – and a form of reconciliation that would put right it’s wrongs. Crime abounded and justice could not be seen, let alone done.

These are huge warnings for today’s world, for I suggest that a society that has lost its appreciation of mercy is a society to be most pitied. Justice will not be found in a merciless society, because the absence of mercy will mean the presence of vengeance and retribution, - characteristics easily seen today.

There must be a priority to emphasize restoration of fragmented relationships for justice to be real and meaningful, and that if there is no such emphasis, then vengeance and retribution will be the main feature, which would reflect the repugnance of the society of Amos day – a sad prospect. A merciless society.

\[\text{And what does the Lord require of you? (asks Micah)}\]
\text{To act justly and to love mercy and to walk humbly with your God.}\n\text{(Micah 6:8)}

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