

RESTORATIVE JUSTICE



Moral Principles and Foundations for Restorative Justice

A Call for Criminal and Juvenile Justice Reform in Illinois
from the Catholic Diocese of Joliet, Peace and Social Justice Ministry
A Working Paper

Introduction

We come to the paradigm of Restorative Justice because we realize that the current approach in our nation's criminal justice system, one of retaliatory punishment, is not working:

- The U.S. has one of the highest rates of incarceration in the world.
- Prisons don't stop crime, with about half of released offenders back in prison within four years.
- The rising financial cost to keep an offender is about the same as attending an expensive university.
- The victim of the crime feels left out, and victimized by the system itself.

Restorative Justice seeks a different approach.

Restorative Justice is rooted in the biblical call for shalom. A call to wholeness for individuals and relationships, a wholeness in relationship with God and the relationship of the Community.

If we were to examine the various prohibitions in the biblical text we would see that they seek to maintain shalom. We would also learn that Community was held as the highest value. Acts which threatened the fabric of community were therefore considered the most serious offenses. Ultimately we would discover that the testimony of scripture is that justice pertains to righteousness; (justice and righteousness are used interchangeably in scripture) that is the righting of relationships, the recovery of community. Restorative justice, the biblical definition of justice, then does not emphasize retaliatory punishment - i.e. isolation from community, but views justice as a process of mending the fabric of a torn community; the object of justice is wholeness - shalom: for the victim, the community, and for the offender. When a crime is committed, many people are hurt in the process. Not only the crime victim, but also the victim's family, the offender's family, the community as a whole and, ultimately, even the offender suffer from the adverse consequences of crime. (1)

Restorative Justice also includes intervention and prevention for those members of our communities who are "at risk." There is an acknowledgement that at times institutions

and systems have either failed or are inadequate in relationship to certain members of the community. Blame and fault are not assessed but rather efforts are made to restore the individual, particularly juveniles, to a competent, law-abiding, productive person and member of the community.

The Biblical and Theological Basis of Restorative Justice (2)

Restorative justice is a comprehensive understanding of the relationships affected by crime which recognizes that the criminal justice system must focus on the injuries, needs, and responsibilities of crime victims, offenders, and communities. Based on ancient principles drawn from the Judeo-Christian scriptures, restorative justice inspires innovative approaches to solving today's crime problems.

There are three tenets fundamental to an authentically restorative perspective; each of them is based on biblical principles, and they fit together within a biblical context. These principles are not extracted from one verse or passage, but are reflected throughout Scripture. While we can identify particular principles and passages which reflect them, it is important to understand that the principles on which restorative justice is based come together within a biblical context. God is a god of justice, and is active throughout human history in restoring the right relationships broken by sin. Those persons broken by crime are a part of those relationships, and restoring them is part of our ministry of reconciliation.

1. Crime results in injuries to victims, communities, and offenders; the purpose of the criminal justice process should be to address and repair those injuries.

This tenet is based on several biblical principles, including:

Restitution

Restitution is a requirement that offenders to pay back or make whole the people who have been harmed by their actions. Specific biblical examples of the concept and use of restitution include the Mosaic law, in Exodus 22, Leviticus, and Numbers 5; and the story of Zaccaeus in Luke 19. Restitution is a concrete reflection of the restoring of broken relationships.

Accountability

A person who is accountable must be ready to tell his/her story, to explain him/herself. There are many passages which reflect this principle by referring to a story as an account, either of a family (Genesis 10:1, Numbers 3:1) or of individuals(Genesis 6: 9). Psalm 10:13-15 refers to God holding a wicked person accountable. In Ezekiel 3:16- 19, God makes Ezekiel a watchman for the house of Israel and holds him accountable, not for Israel's response, but for his own actions. In Romans 3:9-20, Paul describes how the law makes us all conscious of sin and the whole world accountable to God. Accountability is a crucial element of recognizing and changing behavior which causes injuries.

The Lord's question, "What have you done?" which Cain cannot escape, is addressed also to the people of today, to make them realize the extent and gravity of the attacks against life which continue to mark human history; to make them discover what causes these attacks and feeds them; and to make them ponder seriously the consequences which derive from the attacks for the existence of individual and peoples. *Evangelium Vitae I par. 10*

Forgiveness

Forgiveness is both a giving up of a claim to retribution and a ceasing to feel resentment about having been wronged. In Genesis 50:15-21, Joseph's brothers, who have sold him into slavery in Egypt, beg him to forgive them, and he reassures them of his forgiveness. In Matthew 18:21-35, Jesus teaches Peter that forgiving our brothers and sisters is central to restoring our relationship to our heavenly Father. Both of these passages describe relationships in which one party had been wronged, the offenders had been held accountable and taken steps to make things right, and the wronged party gave up their resentment and claims to retribution. Biblical forgiveness can be a very powerful tool in changing harmful behavior.

An essential part of the Christian message is the concept of forgiveness, mercy and healing leading to reconciliation. This is what Jesus won for the human family on the Cross. These gifts form an essential part of what followers of Christ must practice in any age under all circumstances. The practice (of forgiveness) entails the changing of peoples' hearts from anger, bitterness, hurt and resentment to hearts of compassion, healing and mercy. At the end of such a pathway lies true reconciliation. Within a retributive system of criminal justice there is little room for forgiveness or reconciliation. The victims of crime should not be excluded from the criminal justice processes. They need an opportunity to be heard and to access processes which would lead to reconciliation and healing. Too often offenders repeat their crimes, regardless of the social mayhem this causes. Victims often become embittered and harbour their anger, grief and pain for a lifetime. The community hardens its heart to offenders by demanding longer and harsher penalties. *Creating New Hearts – Journey From Retributive to Restorative Justice New Zealand Catholic Bishops Conference.*

2. Not only government, but also victims, offenders, and communities should be actively involved in the criminal justice process at the earliest point and to the maximum extent possible.

This tenet rests on biblical principles which include:

Personal Responsibility

People who are personally responsible are answerable for their actions, and lack of actions. In Genesis 16:18-20, God commands that the Israelites appoint officials who are committed to justice, and warns how they will be held responsible for not following His commands. The prophet Isaiah warns of the many consequences of Israel's failure to meet its responsibilities to justice and righteousness. In Luke 11:46-52, Jesus warns experts in the law that they are responsible for the actions of the generations who have gone before them, as well as their own. All those affected by

crime are personally responsible to be actively involved in healing the injuries which result from crime.

“Cain tries to cover up his crime with a lie. This was and still is the case, when all kinds of ideologies try to justify and disguise the most atrocious crimes against human beings. “Am I my brother’s keeper”; Cain does not wish to think about his brother and refuses to accept the responsibility which every person has toward others. We cannot but think of today’s tendency for people to refuse to accept responsibility for their brothers and sisters.” *Evangelium Vitae* 18

Worthiness/Redemption

No one is beyond the reach of redemption; no matter what we have done or failed to do, we are worthy to be an active participant in responding to crime. The Israelites who were redeemed from slavery in Egypt, even though continually failing to meet the responsibilities of their restored relationship to God, were worthy to be active participants in establishing justice. The first chapter of Isaiah points out that God remains faithful and committed to restoring his broken relationship with people; God will restore judges and counselors (v.26), and Zion will be redeemed with justice (v.27). The epistle to the Galatians focuses on Christ's redemption of people into a restored relationship with God. All of those who are affected by crime are worth being redeemed, and have something to offer in healing the injuries which result from crime.

As John Paul II has written in *Evangelium Vitae*, “Not even a murderer loses his personal dignity, and God himself pledges to guarantee this. And it is precisely here that the paradoxical mystery of the merciful justice of God is shown forth.”

3. In promoting justice, the government is responsible for preserving order, and the community is responsible for establishing peace.

This tenet relies on biblical principles which include:

Discipline

Discipline is training by instruction or exercise, most often to reinforce regularity, order, or rule. in Jeremiah 30:11, God declares that he disciplines, but only with justice. Hebrews 12 5,6 states that the Lord disciplines those he loves, that God's discipline is an indication of our renewed relationship with him. The government has a responsibility to maintain order and work to prevent crime.

Public authority must redress the violation of personal and social rights by imposing on the offender an adequate punishment for the crime, as a condition for the offender to regain the exercise of his or her freedom. In this way the authority also fulfills the purpose of defending public order and ensuring people’s safety, while at the same time offering the offender an incentive and help to change his or her behavior and be rehabilitated. *Evangelium Vitae* 47 par. 56

Fairness

Fairness is a procedural aspect of justice which is often described as the quality of treating similar cases appropriately similarly and treating different cases appropriately differently. According to Psalm 9: 16, the Lord is known by his justice; Proverbs 1:3 and 29: 14 describe the importance of fairness. The government has a responsibility to maintain Fairness and treat all those affected by crime with justice.

Decisions that go against life sometimes arise from difficult or even tragic situations of profound suffering, loneliness, a total lack of economic prospects, depression and anxiety about the future. Such circumstances can mitigate even to a notable degree subjective responsibility and the consequent culpability of those who make the choices, which in themselves are evil. *Evangelium Vitae* 118

Traditionally in our society, the police are held responsible for maintaining law and order. This can only ever adequately be done when they have the respect of the community. That respect is in danger of being eroded if basic injustices are not tackled and if the police are called upon to maintain the law in situations of continued perceived injustice. *Creating New Hearts – Journey From Retributive to Restorative Justice New Zealand Catholic Bishops Conference.*

Reconciliation

Reconciliation is a restoration of right relationships, obtaining agreement and acceptance between parties, making congruous. In Isaiah 61, God anoints Isaiah to preach good news, to comfort all who mourn, to restore the places long devastated, to renew ruined cities, and to turn disgrace into rejoicing, because the Lord loves justice. Second Corinthians 5:16-21 outlines the gospel of God's restoration of right relationships: God reconciled us to himself, and passed on to us this ministry of reconciliation. This reconciliation to God affects our relationships to our families and friends, and neighbors, and gives us a glimpse of the right relationships which still need restoration.

“While the prophets condemn offenses against life, they are concerned above all to awaken hope for a new principle of life capable of bringing about a renewed relationship with God and with others, and of opening up new and extraordinary possibilities.” *Evangelium Vitae.*

An adversarial system by definition does not seek always to find the truth of a particular matter, but rather seeks a victory for one or other party. Such a system does not encourage offenders to take personal responsibility for their actions and can leave victims feeling that they are on trial too. *Creating New Hearts – Journey From Retributive to Restorative Justice New Zealand Catholic Bishops Conference.*

Restorative Justice - Fundamental Principles (3)

While the phrase Restorative Justice is being used by many groups in many different ways, we hold forth that because of its Biblical rooting there are certain fundamental principles which must be maintained for any program or legislation to be authentically Restorative Justice. These fundamental principles are:

1. Crime is primarily an offense against human relationships, and secondarily a violation of a law (since laws are written to protect safety and fairness in human relationships).
2. Restorative Justice recognizes that crime (violation of persons and relationships) is wrong and should not occur, and also recognizes that after it does there are dangers and opportunities. The danger is that the community, victim(s), and/or offender emerge from the response further alienated, more damaged, disrespected, disempowered, feeling less safe and less cooperative with society. The opportunity is that injustice is recognized, the equity is restored (restitution and grace), and the future is clarified so that participants are safer, more respectful, and more empowered and cooperative with each other and society.
3. Restorative Justice is a process to "make things as right as possible" which includes: attending to needs created by the offense such as safety and repair of injuries to relationships and physical damage resulting from the offense; and attending to needs related to the cause of the offense (addictions, lack of social or employment skills or resources, lack of moral or ethical base, etc.).
4. The primary victim(s) of a crime is/are the one(s) most impacted by the offense. The secondary victims are others impacted by the crime and might include family members, friends, witnesses, criminal justice officials, community, etc.
5. As soon as immediate victim, community, and offender safety concerns are satisfied, Restorative Justice views the situation as a teachable moment for the offender; an opportunity to encourage the offender to learn new ways of acting and being in community.
6. Restorative Justice prefers responding to the crime at the earliest point possible and with the maximum amount of voluntary cooperation and minimum coercion, since healing in relationships and new learning are voluntary and cooperative processes.
7. Restorative Justice prefers that most crimes are handled using a cooperative structure including those impacted by the offense as a community to provide support and accountability. This might include primary and secondary victims and family (or substitutes if they choose not to participate), the offender and family, community representatives, government representatives, faith community representatives, school representatives, etc.
8. Restorative Justice recognizes that not all offenders will choose to be cooperative. Therefore there is a need for outside authority to make decisions for the offender who is not cooperative. The actions of the authorities and the consequences imposed should be tested by whether they are reasonable, restorative, and respectful (for victim(s), offender, and community).
9. Restorative Justice prefers that offenders who pose significant safety risks and are not yet cooperative be placed in settings where the emphasis is on safety, values, ethics, responsibility, accountability, and civility. They should be exposed to the impact of their crime(s) on victims, invited to learn empathy, and offered learning opportunities to become better equipped with skills to be a productive member of

society. They should continually be invited (not coerced) to become cooperative with the community and be given the opportunity to demonstrate this in appropriate settings as soon as possible.

10. Restorative Justice requires follow-up and accountability structures utilizing the natural community as much as possible, since keeping agreements is the key to building a trusting community.

11. Restorative Justice recognizes and encourages the role of community institutions, including the religious/faith community, in teaching and establishing the moral and ethical standards which build up the community.

CONCLUSION

We realize that crime and punishment is a volatile issue in the public today. Often driven by ratings, the news media plays on the fears of the public by over-exaggerating the extent of crime in our communities. Politicians use this fear to their advantage to gain votes by promising tough measures to fight crime. Restorative Justice is not naïve to the social realities and the very real presence of crime. It does recognize that the present criminal and juvenile justice system is highly politicized being more responsive to polls than to creating programs that work. Restorative Justice equates toughness on crime with holding offenders accountable for making their victims whole again. It recognizes the necessity for prisons to protect the public from violent, habitual criminals. It also believes non-violent offenders should redress their crimes through a variety of restorative intermediate sanctions. The type of sanction selected is based on the deterrent and rehabilitative needs of the offender and the security needs of the community. By working to repair the damage done to victims and communities, offenders earn the self-respect essential to their eventual return to productive roles in society. Restorative Justice reserves scarce prison space for dangerous, violent offenders. (4)

We call upon all those who are involved with criminal and juvenile justice, as well as the general public, to consider these basic moral principles of Restorative Justice in the development of legislation and programs.

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1. Changing Lenses, Howard Zehr, 1990, Herald Press, Scottsdale PA
 2. The Restorative Justice Institute, P.O. Box 16301, Washington, DC
 3. © 1996 Ron Claassen. May 1996 at UN Alliance of NGOs Working Party on Restorative Justice "Printed by permission"
 4. Justice Fellowship materials, P.O. Box 16069, Washington DC
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