

Justice for All Restoration or Retribution?

By
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This morning, just as I pulled into a parking space across the street, to begin writing my sermon on restorative justice, a police officer pulled in behind me, began flashing his lights, and shined his spotlight on my side-view mirror, completely blinding me to the world outside my vehicle. I couldn't imagine what, if anything, I'd done wrong, and figured he was just suspicious about what I might be doing out so early on a Sunday morning. When his large silhouetted torso emerged from the blackness to interrupt the harsh beam of blinding light, I tried to politely introduce myself, but he remained suspicious and stern. "You're driving with expired tags," he said.

"Hmm, but my birthday's not until May." I responded.

"Your tag says August of '08," he assured me. "Go ahead and give me your driver's license and proof of insurance." As I fumbled through the darkness for my documents, nearly blinded by constricted pupils shielding themselves from the intense light reflected in my mirrors, the officer seemed to soften a little and said, "Just to show you how bad your luck is today, I was turning around to deal with another situation when you passed by and I noticed your expired tags. The good news is that once I write you a ticket, all you have to do is get your registration taken care of, show up at court with proof, and the judge will dismiss it."

I handed him my license and proof of insurance, and he returned a few minutes later with my ticket. "Here ya go. Your court date is May 4th."

"May 4th, that's my birthday!" I said.

"Well have a good birthday," he replied, then disappeared into the light, which soon dissipated, flashing lights, high beam, and all, like some celestial being returning to its home on high.

Could this really all be a coincidence, "just my luck," as the officer suggested? How synchronistic that I should have a firsthand encounter with the law on the very day I'm speaking on the subject, and that I should defend myself against my accuser by saying, "But my birthday's not until May," only to receive a court date scheduled on that very day. Perhaps the blinding being of light I encountered this morning really was an angel—an angel with a badge and ticket book!"

Although this encounter was really no big deal, it does exhibit some of the qualities indicative of our criminal justice system. Just because my car doesn't currently display the proper decal, I was temporarily detained within my vehicle,

intentionally blinded by a harsh spotlight, cited, and am now scheduled to account for myself before a duly appointed magistrate. The officer, in turn, who understandably needed to do all of these things for his safety and as part of his responsibility, had to ignore my attempt at a peaceful introduction in order to remain professional. His training required us to start from a place of animosity, from a place of violation. And though he warmed up a little as he realized I was not a threat, my personhood, like the fact that he'd scheduled me to appear in court on my birthday, had no influence on the outcome of the situation. In violating the law, I have become a criminal and must now pay the piper.

This emphasis on crime solely as a violation of the law, without regard for how it actually affects all the parties involved, represents the primary difference between our current *retributive justice* system and what has been heralded since the 1970's as *restorative justice*. *Retributive justice* focuses only upon violations of the law and responds solely by punishing violators. *Retributive justice*, by contrast, focuses on how the crime has harmed others and responds in an effort to put things right. For this reason, *retributive justice* is more focused on criminals getting what they deserve, and *restorative justice* is more focused on victims getting what they deserve.

As most of you know, for example, four years ago I was fired from my secular job after I took a public stand in favor of gay marriage. Since then I've spent thousands of dollars suing my former employer, owe thousands more, and to this day have not yet seen the inside of a courtroom. Yet, after being identified as a minor offender myself, a rule breaker, a criminal, as recently as this morning, I have a court appointment scheduled in little more than a month. What does this say about our priorities when it comes to justice? It suggests a legal system in which violations against the state receive a fast and immediate response, and violations against individuals are of no concern, unless those individuals should have the time and money to pursue reparations for themselves.

So, it is in concern for the individuals involved in wrongdoings, especially the victims of crimes, that the *restorative justice* movement has emerged. Although, as a movement, we can say it was started by the Mennonites in the 1970's, the principles of *restorative justice* are more ancient than the relatively recent *retributive justice* system. In a 2005 lecture on the subject, Dr. Fania Davis, an Attorney and Law Professor at the New College School of Law in San Francisco, explained that, "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.”¹ This system, she suggests, is less than ten centuries old, having emerged in the 13th century with the dawning of the nation-state and industrial age. “[But] For most of human history,” Dr. Davis continues, “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 the rule. Restitution and reconciliation, not punishment were the overarching concerns. Indeed, in most indigenous languages, there is no word for *prison*.”²

Let’s take the old example of *an eye for an eye*, which Gandhi said, “only makes the whole world blind.” Can blinding someone else restore a person’s sight? Can executing a murderer resurrect the dead? Can locking someone away behind bars liberate a victim of violent crime from the impact of its trauma? Should one foolish act become the defining act, a scarlet letter, hung around the necks of men and women who must forever be considered unredeemable?

Tom Cavanagh, of *Restorative Justice, Inc.*, provides a case study in restorative justice involving a 15-year-old boy who unthinkingly thought it would be funny to fire a paintball gun into a group of girls standing outside an ice cream parlor. Not long after he was charged with second-degree assault with a deadly weapon, having permanently blinded a teenage girl in one eye. As part of his plea agreement, the maximum Justin, the offender, could get was two years probation and 45 days in jail. If he’d been tried as an adult, he could have received up to eight years in the state pen.

In this case, however, both parties, Justin and his victim, Jorel, along with their families, wanted to meet, eye to eye if you will. So a conference was set up by the probation officer the local United Way Office, as a neutral location, during which Justin said, “I never wanted to hurt anybody, but I was being very thoughtless at the time. I understand if you never forgive me. If you don’t get your vision back, I would be happy to donate the part of my eye you need.” During the meeting, everyone present sat in a circle with no barriers between them. During the four-hour meeting Jorel had an opportunity to talk about the traumatic incident from her perspective and how it made her feel. She spoke about how it caused her to lose her job, and her friends and family members talked about how it effected them as well. Justin’s family and friends also talked about how it effected their lives, including an aunt who happened to be blind in one eye, and an older cousin who felt guilty for being a poor role model to Justin when it came to using paintball guns.

¹ Davis, Fania E., Ph.D, “Gandhi’s Justice, Restorative Justice,” Remarks delivered at the 10th Annual *Howard Thurman Convocation* at Church of the Fellowship of All Peoples, 2041 Larking Street, San Francisco, CA 94109, Oct. 16, 2005.

² Ibid.

In the end, in an agreement signed by all present, Justin agreed to help educate others about the dangers of paintballing and his family agreed to pay Jorel and her family's out-of-pocket expenses related to the incident, for which Justin would, in turn, have to repay them. Justin read a letter of apology in which he again offered to give his own eye to Jorel. Those present exchanged contact information and Justin's and Jorel's mothers embraced each other before leaving. During the sentencing hearing, the Magistrate supported the agreement they had drawn up, agreeing to suspend all but six days of Justin's prison sentence, a decision both Jorel and her mother protested. So, in this case, in which an eye for an eye was literally offered to right a terrible wrong, the victims of this crime received much more than they would have had Justin merely been punished and locked away.

Howard Zehr, a leader and founder of the restorative justice movement, says this is the heart of restorative justice, "to put right the wrongs."³ Whereas a criminal justice system focused solely upon punishing offenders does little-to-nothing to satisfy the needs of victims, many of whom have suffered bodily injury, psychological trauma, personal degradation, and the loss of property. In outlining the difference between these two views, he suggests that in criminal justice, "Crime is a violation of the law and the state; Violations create guilt; Justice requires the state to determine blame (guilt) and impose pain (punishment); [and the] *central focus [is] offenders getting what they deserve.*" In Restorative justice, on the other hand, "Crime is a violation of people and relationships; Violations create obligations; Justice involves offenders, and community members in an effort to put things right; [and the] *Central focus [is] victim needs and offender responsibility for repairing harm.*"⁴ In short, "Criminal justice," asks, "What laws have been broken? Who did it? What do they deserve?" Whereas, Restorative justice asks, "Who has been hurt? What are the needs? Whose obligations are these?"⁵

Although I agree with Zehr as to the distinction between these two approaches, I do currently disagree with his terminology. What Zehr likes to call "criminal justice," I still prefer to call, "retributive justice," or even, "punitive justice." In defense of Zehr, Gandhi did say, "The word 'criminal' should be taboo from our dictionary. Or we are all criminals. 'Those of you who are without sin, cast the first stone.'"⁶ But in saying such, I do not believe Gandhi meant to criminalize humanity, but to humanize criminals. Yet this is not to say that humans don't commit crimes, and that we don't, as a society, have an obligation to address crime. The question is merely how we go about addressing crime? And, in my opinion, our current criminal justice system already has both the apparatus and desire in place to

³ Zehr, Howard, *The Little Book of Restorative Justice*, Good Books, Intercourse, PA, 2002, p. 19.

⁴ Ibid. p. 21.

⁵ Ibid.

⁶ Gandhi, *All Men are Brothers*, Continuum, New York, NY, 1980, p. 159.

practice restorative justice, even if it does not yet have an adequate model and system ready.

Restorative justice is a model that simply asks our courts to shift their emphasis from punishing criminals to restoring victims. And in many instances this happens already. In my case, for example, all I have to do is make sure my vehicle registration is made current, and all will be forgiven. There won't be a fine or sentence of any kind. I just need to make certain that I am in right relation with my community, which requires all of us to have our vehicles properly registered for a variety of practical reasons. So for me, restorative measures are but another set of tools our court officials ought to be able to use when dealing with crime.

So, as I conclude this brief talk on the subject of restorative justice, I should say that I've intentionally not talked much about the benefit this system of justice has on offenders, like the reduction of recidivism, shorter prison terms, evoking feelings of genuine empathy and remorse, and redeeming them as productive members of community. These are all very positive bi-products, but it is a mistake to think that restorative justice is about forgiveness and reconciliation. It isn't! Restorative justice is about victims, and victims' rights. It's about concerning ourselves, as a society, with our obligation to right the wrongs of those who have been injured during a crime.

Today this is being accomplished in a variety of ways; through a court sanctioned *circle process*, like the one involving Justin, Jorel, and their families; through *family group conferences*, in the case of juvenile crimes, in which an offender's family comes together with justice professionals to mutually determine the best ways to make reparations; through *victim impact panels*, in which crime victims visit non-matched inmates in the hope of initiating reform by evoking empathy and remorse; and, in some cases, after lots of preparation, actually bringing victims together with their specific offenders, a situation that may help the offender realize the true consequences of the crime, but, more importantly, to help the victim heal through a process of confrontation and understanding.

Today, after just three decades, there are 1000 restorative justice programs in North America. 30 states in the U.S. have or are developing restorative justice legislation. There are 900 restorative justice programs in Europe, including the European Union's Intergovernmental program. In 1999 the UN adopted a resolution urging member-states to use restorative justice. Approximately 80 countries do so. And since 1989, New Zealand passed the Children, Youth and Their Families Act, entirely shutting down its juvenile prison system and replacing it with restorative justice. So, as you can see, restorative justice is not a mere pipe dream. It's real, and it's happening. When it comes to justice, the only question is how do we right the wrongs that have been committed? Not, how do we punish wrongdoers? Restorative justice is an understanding that we can only bring justice to people, not people to justice.