

Restorative Justice and the Common Good:

Creating a Culture of Forgiveness and Reconciliation

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Restorative justice is a valued-based approach to criminal justice, with a balanced focus on the offender, victim, and community. The foundation of restorative justice is to determine the harm resulting from a crime, what needs to be done to repair the harm, and who is responsible for repairing the harm. In contrast, the dominant approach to criminal justice today, retributive justice, focuses on determining what law was broken, who broke it, and how they will be punished. Restorative justice advocate Tom Cavanagh seeks to identify and clarify the core values of this approach to one of the enduring social issues of our time.

Today as a culture we are focused on tolerance: tolerance of differences, whether they be ethnic, racial, or economic. Our slogan might be, "You can do what you want as long as you let me do what I want." This focus is based on the virtue of "non-judgmentalism." Where morality is primarily personal, not public, we believe such non-judgmentalism leads us on the path least likely to bring up past pain and provoke more violence.

The question I ask myself is: is tolerance enough? I suggest tolerance is not enough because tolerance did not create our present situation and is not the solution, for tolerance will not heal the wounds of our society, nor cure social isolation and despair. The answer lies in a focus on the common good. Restorative justice advocate and New Zealand priest Jim Consedine defines this common good as "the whole network of social conditions which enable human individuals and groups to flourish and live a fully human life. Far from each being primarily for him or herself, all are responsible for all."

Presently the dominant ethical norms in our culture seem to be kindness and honesty rather than social justice and social equality. I suggest this is a direct result of the creation of a large, affluent middle class, who live with those people like-situated, apart from those who are different. This pervasive attitude avoids the real quality of life issues in the United States such as:

- Economic deprivation
- Unemployment
- Single Parenthood
- Drug/alcohol-related violence.

The philosophy of the common good offers an alternative vision to our current reality. Certainly peace is at the center of the common good, and forgiveness and reconciliation are the ways to peace in ourselves, our families, and our communities. Pope John Paul II saw this new millennium as a mutual celebration of forgiveness and reconciliation. In his Message for the World Day of Peace, January 1, 1997, the Pope said:

Certainly there are many factors which can help restore peace, while safeguarding the demands of justice and human dignity. But no process of peace can ever begin unless an attitude of sincere forgiveness takes root in human hearts. When such forgiveness is lacking, wounds continue to fester, fueling in the younger generation endless resentment, producing a desire for revenge and causing fresh destruction. Offering and accepting forgiveness is the essential condition for making the journey towards authentic and lasting peace.

With deep conviction, therefore, I wish to appeal to everyone to seek peace along the paths of forgiveness...As scripture bears witness, God is rich in mercy and full of forgiveness for those who come back to him. God's forgiveness becomes in our hearts an inexhaustible source of forgiveness in our relationships with one another, helping us to live together in true brotherhood.

In September of 1999 the Wisconsin Catholic bishops recognized the value of forgiveness and reconciliation in their letter titled, "Public Safety, the Common Good, and the Church: A Statement on Crime and Punishment in Wisconsin." The bishops noted,

During his public ministry, Jesus called on followers to not just love their neighbors but also their enemies; to do good to those who harm you. Instead of unlimited revenge and retaliation, Jesus called for unlimited love (Matthew 5:38-48) and said our forgiveness should be beyond calculation, it should be 70 times seven (Matthew 18:22).

And even while Jesus hung dying on the cross in pain, he extended welcome and love to the criminal hanging next to him (Luke 23:43). This was "an act of extreme mercy, an extreme gift, which can give confidence even to those who feel totally lost. With this act of forgiveness, the Lord speaks to humanity in every age."

How can we begin to implement forgiveness and reconciliation in our daily lives so we can create this peace? Restorative justice is one solution to this question. I began learning about restorative justice six years ago. Since then the recognition of restorative justice as an adjunct to our current retributive system grew. Roger Warren, president of the National Center for State Courts, pointed out the emerging trend towards a system of restorative rather than retributive justice. National Institute of Corrections Director Morris Thigpen noted a transitional change is occurring in the criminal justice system involving themes of restorative justice. Nancy Gist, Director of the Bureau of Justice Assistance, called for bridging the gap between the courts and the public, and in March of 1999 Colorado Governor Bill Owens signed into law a bill "concerning a restorative justice program in the juvenile justice system." In their 1999 letter the Wisconsin Catholic bishops said, "All of us must be involved in the work of restorative justice and all institutions have something to contribute to making it a reality."

Restorative justice's emphasis on healing the harm of crime, with a balanced focus on the offender, victim, and community, creates the foundation for a set of practices the current retributive system cannot achieve, because it is based on law and punishment. This story illustrates the outcomes of our retributive system.

The chains were noisy as they were dragged on the floor by the juvenile. I heard the familiar sound as I was waiting for another session of court. That day I looked in the hallway to see who was wearing the chains. I saw what appeared to be a ten-year-old boy, barely big enough to drag the heavy chains, manacled around his wrists and shackled to his ankles. I was appalled. Why was this boy arrested, locked in jail overnight, and then brought to court like this? What heinous crime did this young boy commit to deserve this punishment? I was so angry I sought out a prosecutor to find the answer to my questions.

I learned the boy was arrested and jailed for stealing candy. I was ashamed that such a petty offense warranted such treatment. I told the prosecutor, "If the treatment of this young boy is the best we can do, then we have failed and failed miserably." Yes, as a society, in our communities, and as a system of criminal justice I would hope we could do better than treat this young boy with such utter disgrace.

The social problems we are asking our courts to solve cannot be addressed by our current system of justice. These problems, as well as our judicial system, are based on a philosophy embraced by our current society focused on utilitarianism, expediency, and the pursuit of self-interest. Restorative justice offers us an opportunity to address these problems, backed up by our traditional system, and renew the confidence of the public in our courts. This account of the "Paintball case" illustrates how restorative justice can work.

The paintball incident occurred in April of 1998. A young man shot a paintball gun at a group of girls outside Swenson's Ice Cream Parlor in Fort Collins, Colorado, striking a young lady in the eye, resulting in permanent blindness.

On June 8th the young man appeared in juvenile court and pled guilty before Magistrate Joseph Coyte. In the meantime, the offender and victim wanted to meet face to face. Probation Officer Mort Gallagher suggested this case was ideal to use a family group conference, a restorative justice process.

The conference was held at the United Way office the day before the sentencing to accommodate the presence of everyone who wanted to attend. Bernadette Felix, probation officer for the offender, obtained approval from Magistrate Coyte to hold the conference and received his support.

Leslie Young, a trained mediator for family group conferences and a Loveland police officer, coordinated the process. Fifteen people attended. The four-hour conference resulted in an opportunity for the offender and his family, the victim and her family, and members of the community to share their stories about the incident and the resulting effects. A key theme during the discussion was concern for the safety of others involved with paintball guns and of the need to inform others about the dangers of paintballing.

The young man and his family assumed financial responsibility for the expenses incurred by the victim and her family. He read a letter of apology to the victim, in which he offered to donate his eye to replace the victim's eye, which was blinded in the incident. A final agreement was prepared and signed. In speaking about the conference, Felix said, "Initially it was very tense, but as it went on, people were able to come together as a team. It was a real powerful experience."

The day after the conference was the sentencing hearing in front of Magistrate Coyte. He expressed support for the agreement and sentenced the young man to two years of probation and 45 days in jail. The jail term was suspended, except for six days in jail on weekends.

On September 10th, a letter to the editor from the young man appeared in the Fort Collins *Coloradoan*, with the headline "Teen learned the hard way about paintball gun dangers." In the letter he described to the community how sorry he was for hurting the girl and how such a result needed to cross his mind before he shot the paintball gun. Through this incident those involved in the conference showed that we can bring together the victim, offender, and community and heal the harm of a crime.

From the philosophy of the common good, we learn about human dignity, and that knowledge forms the basis for how people form systems of justice. By disregarding morality and values, our dominant judicial system came to focus on expediency and practicality,

which is a utilitarian/individualistic approach. Such a retributive approach relies on a new mindset of reality through punishment (coercion) rather than rehabilitation by appealing to an individual's reason and human conscience, resulting in freely chosen behaviors.

In contrast, retributive justice values center on command, prohibition, permission, and punishment. From the idea of the common good we learn the purpose of the law (state) is to support and create communities of people who are spiritual and whose ultimate destiny transcends the community, not to govern a group of individuals with no life beyond the community.

Such "Age of Enlightenment" thinking leads to consumerism and having, as contrasted with common good behaviors of self-giving and being, based on such values as truth, beauty, goodness, and community.

The common good is grounded in the health of the family. Therefore, under common good the criminal justice system is obligated to protect and promote the family. The restorative justice values of unity and stability of the family support this principle. These values are exercised through respect for the dignity of individuals in the family, independence and privacy of the family, and integrity in dealing with families, to include extended families.

Healing/Restoring Relationships

From the philosophy of the common good we learn that relationships are the essence of our being, both with other people and with God. Therefore, we can understand the restorative justice choice to restore broken relationships rather than focusing on punishment. Being human and living in relationship with others are intrinsically intertwined. Relationships are the essence of personhood. The key concept is that people exist only in relations with each other. This concept of relationships contrasts with the dominant culture's focus on individualism.

We can strengthen relationships in our communities by works of charity and solidarity which assure that families receive adequate resources. The strengthening of relations between generations within the community and the creation of networks of solidarity results in a strengthening of the community fabric.

A core concept under the common good is that the family is more sacred than the state. The purpose of the state is to protect and serve the family, which represents the core and smallest unit of the community. From the philosophy of the common good we learn that the fundamental relationship is the family. The family is the core social institution and the primary part of society. The emphasis on family causes us to:

1. Form a community of loving persons
2. Be dedicated to life
3. Participate in the development of society by recognizing the value of the family
4. Share our belief in the value of the family with others

As a result of recognizing the value of the family, restorative justice seeks rehabilitation as the first choice, particularly with juveniles. While the retributive justice approach relies on imprisoning people, restorative justice views the separation of the offender from his or her family to be the last resort, since the family relationship is valued so highly.

The concept of community under restorative justice focuses on seeking the common good based on:

1. Respect for the basic dignity (personhood) of every person
2. Commitment to the well-being and development of all people, particularly through providing the basics of human life: food, clothing, health care, work, education, culture, information, and the right to have a family.
3. Living in peace in an environment where the common good and community are one, that is, synonymous.

Such a shared vision of the common good leads to the restorative justice core value of a balanced focus on the offender, victim, and the community. Thus the objective of restorative justice is to promote the common good.

Our country's laws were based on the ultimate authority of a greater law called divine law. The Constitution of the United States affirmed the existence of the common good and perpetuated belief in God.

Common good values respect the law of God and are an alternative to the prevalent thinking, called utilitarian positivism, by recognizing the dignity of personhood and the sanctity of the family. A restorative justice based on such values will promote the common good and limit the power of the state.

Our dominant "Age of Enlightenment" approach to justice views the common good in terms of "in the public interest." Rather than

focusing on the core values which are shared by all and come from the heart of a community, the public interest is based on a collection of private rights or "the greatest good for the greatest number."

The result of this "Enlightenment" approach is a vision of creating a safe community, one in which the dominant members can feel safe from those who live on the margins of society. This safety is achieved by separating those marginalized people from the community and putting them in prison. As a result, prisons contain an over-represented population of ethnic minorities, mentally handicapped, and the poor. Such disproportionate numbers of these people is contrary to the common good and the restorative justice concept of healing relationships. Emphasis on the common good creates a culture of peace by uniting people and making them responsible for one another.

However, restorative justice will only end up as a passing trend or fad if it is not based on a sound philosophy. Restorative justice is well founded in the philosophy of the common good. The common good was defined by the Catholic bishops of England and Wales as "the whole network of social conditions which enable human individuals and groups to flourish and live a fully, genuinely human life, otherwise described as 'integral human development.' All are responsible for all, collectively, at the level of society or nation, not only as individuals." This collective responsibility is at the core of community and arises from the social nature of people and the need for relationships. As David Hollenbach, S.J., said in a presentation entitled "The Common Good and the Recovery of Public Life," presented at the inauguration of the Institute on the Common Good, at Regis University in Denver in October 1998. "Americans lack a vision for the common good," preferring the virtues of tolerance and non-judgementalism over a "recognition that the dignity of human persons is achieved only in community with others" including a "commitment to solidarity with others," and focused on the "national and the global common good."

The New Zealand Catholic bishops applied the concept of the common good to restorative justice by writing, "Restoration was the primary focus of biblical justice systems...It was based on the need to seek shalom, the peace and well-being of the whole people. Shalom does not simply mean the absence of conflict. It means peace combined with justice and right relationships. The law was there to seek, protect and promote shalom."

"The Common Good" document outlined two basis tenets: subsidiarity and solidarity. Subsidiarity was defined as "decisions being taken as close to the grass roots as good government allows." Solidarity was described as meaning "we are all responsible for each other." As described the New Zealand Bishops, the restorative justice complement to these ideas "seeks to help offenders take personal responsibility for their behavior, encourages victims to seek healing, and a restoration of well-being, and challenges the community to recognize the human dignity of both offender and victim, with a view to helping repair the damage done by the criminal behavior."

Contributive Justice

Another important aspect of the common good, as explained by the bishops of England and Wales, is "the obligation of every individual to contribute to the good of society, in the interests of justice and in pursuit of the 'option for the poor.'" We realize our current retributive system of justice focuses on imprisonment of offenders. The poor, dark-skinned, addicted, mentally ill, and those living on the margins of our society are disproportionately represented among the two million people incarcerated in this country today. The spiral of involvement of these people results from a criminal justice system focused on vengeance and punishment. Such a system breeds violence, unfairness, and inhumanity and ignores common sense and the well being of the community. Often our prisons are "an affront to human dignity...and a poison in the bloodstream of the nation," as described by the New Zealand bishops.

"Each person possesses a basic dignity that comes from God," said the bishops of England and Wales, and they proclaimed, "Every public policy should be judged by the effect it has on human dignity and the common good." Father Consedine, who is a restorative justice activist and consultant to the New Zealand bishops, explained further at the Neil Williamson Memorial Lecture for New Zealand judges, in June 1998, entitled, "Morality and the Law: The Relationship Between Restorative Justice and the Common Good," "In essence justice is an active and life-giving virtue which defends and promotes the dignity of every living person and is concerned for the Common Good insofar as it is the guardian of relations between individuals and peoples." Father Consedine continued, "I would argue that the recognition and acceptance of the Common Good as being the most important component of a commonly held morality is the most urgent task of our time." The New Zealand bishops and Father Consedine outlined a vision of restorative justice, in the context of the common good, as the ability to create communities of peace, through the healing of relationships in the community, focused on the common good of all involved. The underlying theme of restorative justice is healing every person affected by a crime through reparation, rather than punishment, based on the values of apology, forgiveness, and reconciliation.

The Wisconsin Catholic bishops grounded a restorative approach to justice in the following way: *From its beginning, the Church has tried to help individuals and communities struggle with the reality of sin and wrongdoing. Both through ministry to those affected by sin and wrongdoing and by reflection on its causes, the Church has helped people in their struggle to heal the wounds of broken trust and ruptured relationships...*

According to the Catechism of the Catholic Church, "the common good concerns the life of all." Thus, every person has a responsibility to contribute to the common good and a right to have his or her needs respected as the community arranges its life to further the good of all.

This blend of personal responsibility and recognition of basic rights is also reflected in the three elements of the common good: respect for the person, the well being of the group, and peace, that is the stability and security of a just order.

The need to educate and promote the common good is crucial to making the changes necessary for restoring our justice system to its intended role in our society. Consedine said, "I would argue that the recognition and acceptance of the principle of the common good as being the most important component of a commonly held morality is the most urgent task of our time."

Based on the need for justice to be rooted in the common good, what then is justice? Consedine responded, "In essence justice is an active and life-giving virtue which defends and promotes the dignity of every living person and is concerned for the common good insofar as it is the guardian of relations between individuals and peoples."

Law and justice are not the same. Justice flows from the law and should reflect a system of values, including fairness, truth, honesty, compassion, and respect. Justice needs to be based on the principles of respect, mercy, and forgiveness. By far, forgiveness is the most difficult principle to understand and embrace in our current society.

A restorative justice founded on the common good will achieve the mission of learning how to repair the harm of crime by concentrating on the core values of personal responsibility, apology, healing, mercy, forgiveness, and reconciliation. Such a process is transformative in nature and gives hope, honors the dignity of all involved in the crime, and treats people with respect.

The vision of restorative justice, in the context of the common good, is to create communities of peace, through the healing of relationships in the community, focused on the common good of all involved. The underlying theme of restorative justice is healing every person affected by a crime through reparation, rather than punishment, based on the values of apology, forgiveness, and reconciliation.

Any idea based on the common good poses a serious threat to the dominant system of justice and current thinking in our culture. Our affluent/consumer society equates people with economics and satisfying material needs. This view creates a partisan interest, replacing the common good, which sets one group against another and imposes the interests of one group on another without regard to individual rights. Such thinking underlies the vision of safe versus peaceful communities.

The Wisconsin Catholic bishops issued a strong challenge to Catholics. "We must invite each person, victim, and wrongdoer to restore their belief in a human family that is larger than they are but incomplete without them. For, in the final analysis, only a community that tempers justice with mercy and that welcomes back its prodigal children can be healed. Only such communities can become truly safer. And only in the peace of such safety can the common good be realized."

Long-term change of our judicial system and implementation of the core values of restorative justice will require a foundation in a sound philosophy like the common good. A restorative justice founded on the common good will achieve the mission of learning how to repair the harm of crime by concentrating on the core values of responsibility, apology, healing, mercy, forgiveness, and reconciliation. Such a process is transformative in nature and gives hope, honors the dignity of all involved in the crime, and treats people with respect. . I challenge you, and I challenge myself, to seek the greater vision of the common good, to replace our inward focus on our wants, needs, and desires with a commitment to the common good of all.

About the Author

Tom Cavanagh, MS, is a scholar, writer, and facilitator of restorative justice. He facilitated a private forum called, "A conversation about restorative justice in Colorado," as part of the Institute on the Common Good at Regis University in Denver. He is currently an Affiliate Professor of Management for the School for Professional Studies at Regis University. He worked 28 years as a court reporter for the District Court in Fort Collins.

Additional Resources

Tom Cavanagh maintains a website devoted to restorative justice topics: <http://www.restorativejustice.com/index.html>. Another helpful website on this topic is maintained by the Campaign for Equity-Restorative Justice at <http://www.cerj.org>.

Retrieved from: <http://www.loyno.edu/twomey/blueprint/blueprint-april2000.htm>
Loyola University, New Orleans