

THE 2001 KUYPER LECTURE

Response

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Force and Restorative Justice

In Response to
James Turner Johnson's lecture

Can Force be Used Justly?
Questions of Retributive and Restorative Justice

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Introduction

Several years ago I met a young man in Oklahoma who had committed some serious crimes. He wanted to tell me what had happened when he got caught. He and a group of friends had decided to have a weekend party, but didn't have a place to hold it.

So they drove through the farmland outside their town until they found a house that was unoccupied. When they broke into the house they discovered that the owners were on vacation and wouldn't be returning soon. So he and his friends spent the weekend there, partying, drinking and doing drugs. They ransacked the house, vandalized it, and stole anything that looked good to them.

When the owners returned, they were devastated, as you can imagine. They were shocked and frightened. They were angry. They felt violated. They faced a huge repair bill. Some of the things that had been taken couldn't be replaced. When they were told that the young men responsible for this had been arrested, pled guilty, and been convicted, they wanted to be in court for the sentencing hearing. They wanted to see who had done this to them, and get answers to some questions they had. They were told that the plea agreement was for a sentence of five years in the state penitentiary. They protested that they wanted a say in the sentencing, and asked if they could meet with the defendants one at a time. They had things they wanted to say, questions they wanted answered.

The criminal justice wheels were turning, and in many respects the victims should have been pleased: the police had caught the criminals, the defendants admitted guilt, the judge had found them guilty, and they would be sentenced to a significant prison term. The victims didn't even have to testify during a trial or sentencing hearing. But no one had asked this couple -- whose house, property, and lives had been so profoundly affected -- what they wanted. And what they wanted was something more. Something that would let them experience justice themselves, and not just watch it be done to the offenders.

What they wanted was restorative justice.

With a trained mediator helping, the victims met with each of the defendants. They had lots of questions. They wanted to know why this had happened to them. The young man explained that it had nothing to do with them personally, he and his friends had just wanted a place to hang out for a couple of days. That was important news for the victims, who had been afraid that someone had deliberately singled them out for some reason.

There had been a series of other crimes in that community that were rumored to be connected with a satanic cult. So the victims were concerned that there might have been occult activities in the house. You can imagine how violated this deeply religious couple must have felt, and how relieved they were to learn that nothing like that had happened in their home.

When the couple first entered their house, they had noticed a trail of gunpowder running through the house, up the stairs and into the attic. "What was that all about," they asked. "Were you planning to blow up the house?"

The answer, it turned out, was no. One of the defendants had found a container of gunpowder in the attic and stolen it. The box had a hole in it and the gunpowder had leaked out as he took it through the house and out to his truck.

"What are you going to do about this?" the victims wanted to know. The young man agreed to a restitution schedule that included helping out with chores on the farm. The victims and the young man presented this to the judge who said it was unusual, but that if the victims wanted it he would go along with it. He put the defendant on probation conditioned on his keeping the agreement.

When I talked to him a year had passed. He had worked at the farm on weekends all year, and when the couple had gone on vacation that summer, they asked if he would stay in the house and guard it. He felt honored to do that, and saw it as one way to make up for what he and his friends had done the year before.

I asked him how he felt about this process. He said that when he was first sentenced to prison, he was scared and mad. He had never thought about the victims; he didn't even know what they looked like. When he heard they wanted to meet with him, he had been afraid to, but did it anyhow because he didn't want to go to prison.

And it was during that meeting that he began to realize how devastating this had been to them. He now understood that while he and his friends were thinking only about their enjoyment, they had caused real and profound injuries to these people. He was truly sorry. He was glad that he had the chance to make things right, and especially to work for the victims.

Over the course of the year, they had come to know and like each other. He was settling down, had gotten a job, and had recently become engaged. He had told his victims about this, and they were happy for him. In fact, they were looking forward to attending his wedding.¹

Restorative Justice

Restorative justice is a more comprehensive response to crime than contemporary criminal justice, because it is not solely concerned with the offender's lawbreaking. It is more expansive in scope, focusing also on the harm suffered by the victim, on what is needed to repair the harm, and on who is responsible for doing that. Programs associated with restorative justice include victim offender mediation (where the victim and offender meet with the help of a facilitator), conferencing (where family and friends of the parties may also participate and circles (in which anyone from the community can join the conversation with victims, offenders, family and friends).

There are four key values or components to restorative justice: making amends, reintegrating into the community, encountering the other, and including all parties in the processes designed to accomplish restoration. This means that there is a strong emphasis on restitution, apology, respectful treatment of victim and offender, assistance to either or both as they deal with the aftermath of the crime, conversation, and clarity about the wrongs done and what is needed to make things right.

Restorative justice is a relatively new movement, only 20 years old, although it draws from ancient concepts of law and justice. For example, Old Testament law called for restitution as the sanction of choice for many crimes, including violent crimes. The

¹ I have used this story in many presentations because it reflects many key elements of a restorative response. I am not aware of it appearing in print.

story of Jesus and Zacchaeus in Luke 19 is an example of a restorative response to crime.

Restorative measures were initially applied at the level of personal crime, but they are now extending beyond that. Desmond Tutu has described the South African Truth and Reconciliation Commission as an application of restorative justice to state wrongdoing.

The subtitle of Dr. Johnson's lecture is "Questions of Retributive and Restorative Justice." Some have suggested that the two are opposites; that retributive justice focuses on punishment and restorative justice on healing. In fact, its proponents sometimes present restorative justice in those terms. But Conrad Brunk has convincingly argued that this is a false dichotomy, and that in fact, restorative justice processes achieve retributive goals of accountability, denunciation and deterrence more effectively than traditional criminal processes.

Restorative Justice and the Use of Force

Because restorative justice values the voluntary participation of victims and offenders, it has typically been used in situations in which the parties want to be involved. Consequently, restorative justice thinkers and practitioners have not spent much time to date working on a restorative rationale for or against the use of force or coercion, other than to affirm that people should not be forced into processes that require voluntary participation.

Mennonites carried on early work on restorative justice, and their pacifist stance has undoubtedly influenced restorative justice. However, today only a small number of restorative justice practitioners, researchers and theorists are Mennonite, and for many the use of force does not pose a problem, so long as it is not used to coerce people into processes that work only when people are willing to be there.

This conversation, however, needs to move beyond initial positions into more reflective and principled positions. The issue of force, from a restorative perspective, is not a simple one. For example, we are learning that assuring the safety of the victim is a very important prerequisite to a restorative process. This is particularly true with certain kinds of crime, such as domestic violence and other crimes involving people who were previously in a relationship with each other. Furthermore, using force often creates new harms, which means that it represents a step backward from the restorative effort to repair harm. Finally, not all who participate "voluntarily" are really volunteers; most make choices in light of potential or actual alternatives that are more onerous.

Using Force to Achieve Shalom?

James Turner Johnson's quote from Augustine's letter to Boniface could resonate within restorative justice:

"We do not seek peace in order to be at war, but we go to war that we may have peace. Be peaceful, therefore, in warring, so that you may vanquish those whom you war against, and bring them to the prosperity of peace."

The phrase “prosperity of peace” sounds like very much like *shalom*, which is an important concept in restorative thinking. Old Testament law viewed crime as a breach of *shalom*, and the purpose of justice as restoring *shalom* by repairing the breach. The Hebrew word for restitution is *shillum*, which comes from the same root as *shalom*.

Shalom is far more than the absence of conflict. A cease-fire may be imposed, either by one side or by a third party, or it may be negotiated by both sides after long and inconclusive struggle. The result is a cessation of armed conflict that may be welcomed by all, but it is certainly not *shalom*. That kind of peace is generated from within the community and the individuals who comprise it. It emanates from the righteousness of members of the community in their personal and corporate behaviors.

So if “prosperity of peace” is understood to mean *shalom*, Augustine seems to be saying that even in fighting, one’s attitude and conduct should be such that it would be possible at the conclusion of the war to live in *shalom* with the people you have fought. Fighting will not bring about *shalom*, but you can fight in such a way that it is possible to imagine living in *shalom* with the enemy. The statement, read in this way, speaks to the state of mind of the combatants.

But is it possible to maintain such a state of mind in the course of conducting a war? After all, wars are fought to be won. The choices offered to citizens and to allies are binary: “You are either with us or with our enemies.” War requires propaganda, with its caricatures and misinformation – it does not foster a deepening understanding of the other nor does it cause us to reflect on our own failings. As Alexander Solzhenitsyn wrote, “The universal dividing line between good and evil runs not between countries, not between nations, not between parties, not between classes, not between good and bad men: the dividing line cuts across nations and parties, shifting constantly.... It divides the heart of every man.”²

Embracing the Enemy

Miroslav Volf is a Croatian-born theologian who suffered during the Serb-Croat fighting after the fall of Yugoslavia. As he struggled for a theological perspective that would lead to peace, he found no help in liberation theology. The reason was that both sides believed that the other side oppressed them, and liberation theology served only to justify their struggle against each other.

² I reflected on this while traveling to a gathering of Prison Fellowship International affiliates in South Africa just days after the September 11 attacks. As my plane descended into the airport at Johannesburg, I reflected on the amazing recent history of that country, and in particular on the name of Bishop Desmond Tutu’s book, *No Future Without Forgiveness*. I was struck by the fact that in all of the news coverage, writing and conversations I had been a part of, the word forgiveness had never come up. Furthermore, I could not imagine a way to bring that up without being completely disregarded as soft on terrorism, insensitive to the victims of the terrorism, etc.

As of this writing, there has still been very little done in that regard, and it is a conversation that is hard to imagine taking place while the response to the attacks continues. What is being called for is unity and determination to see this effort completed. That is the normal and appropriate response to war.

And yet, Christ told us to forgive as our Father has forgiven us. Jesus showed us the model of that in forgiving even as he was being killed. This was not forgiveness given after the fact, but during the course of the injustice.

One can debate whether the call to forgive has any application to governments. But I know of no one who would argue that it does not apply to individual Christians. Does war, even just war, make it more or less likely that individual Christians will obey God’s command, or that pastors and religious leaders will issue national calls to forgive and to repent of our unforgiveness?

I think it makes this response less likely.

In reflecting on the Father's embrace in the parable of the Prodigal Son – a picture of God's response to all of us who have been, and are, wrongdoers – he came to understand that this was the posture God wanted him to assume with those who had wronged him. Since then he has been developing a theology of embrace as an alternative to the theology of liberation. In doing so, he contrasts the Father's response to the Prodigal with that of the older son. The older son thought in terms of moral categories (interestingly, the Prodigal Son did as well), but the father operated out of relational categories. What was of critical importance to him was his love for his son. This did not remove the moral categories, as we can tell from how the story ends, but his love transcended those categories.

It is important to remember that Volf's work has been to find a theological perspective that can offer peace in situations of entrenched hostility and mistrust, such as cases of ethnic violence. His work has not focused on finding a justification for war, but instead on finding a theological understanding of evil that can lead to peace.

Volf was asked in an interview with Christianity Today whether his insight could be applied to governments. He replied that he suspected it had some sort of application to governments, but that he had not yet sufficiently worked this out.

That, I think, is also the posture of many involved in the restorative justice movement on the question of use of force. The *shalom* that was built between the victimized couple in the farmland of Oklahoma and the young man who injured them came not by using force, but by using restorative approaches. On the other hand, there was force used or threatened (by the police who arrested him, the court that tried him, and the prison that was ready to receive him), and it could be argued that this created a context in which restorative measures could be successfully applied.

Bibliography

Brunk. "Restorative Justice and the Philosophical Theories of Criminal Punishment." In Hadley, ed. *The Spiritual Roots of Restorative Justice*. Albany, NY: State University of New York. 2001.

Carnes, "To Embrace the Enemy: An Interview with Miroslav Volf," September 21, 2001. Available online at <http://www.christianitytoday.com/ct/2001/138/53.0.html>. (October 18, 2001).

Tutu, *No Future Without Forgiveness*. New York: Doubleday. 1999.

Van Ness and Strong. *Restoring Justice*, 2nd Edition. Cincinnati, OH: Anderson Publishing. 2002.

Volf, "After the Grave in the Air." Speech given at 16th Annual International Prayer Breakfast, United Nations, on September 11, 2001. Available online at <http://www.chrstianitytoday.com/ct/2001/138/54.0.html> (October 18, 2001)

Zehr. *Changing Lenses: A New Focus for Crime and Justice*. Scottsdale, PA: Herald Press. 1990.