

RESTORATIVE JUSTICE: a new vision for criminal justice

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Robert Hughes, in his work **The Fatal Shore** analyses what England hoped to achieve by settling Australia as a penal colony:

It was a new colonial experiment: an unexplored continent would become a jail. Australia was settled to defend English property, not from the invader across the Channel, but from the marauder within, the 'criminal class'. English lawmakers wished not only to get rid of the 'criminal class', but if possible to forget about it.

It has become clear to me that the political and economic history of a nation determines, more than does a clearly developed philosophy of the human person, its choices of the human rights it recognises and respects.

OUR PUNITIVE PAST

This struck me most clearly when I was on a study tour of jails and prisons in the United States some years ago. High ideals are expressed in the statements of the Founding Fathers on the monuments around Washington D.C. in defence of individual freedom and human rights, while less than a few blocks away were the worst housing conditions that I had seen anywhere in the Western world. Across the country, I visited so called correctional institutions, especially the county jails, remand facilities, which were packed full of Afro-American and Hispanic people living in conditions which reminded me of the living conditions within the slums of Metro Manila and Calcutta!

After visiting Australian prisons for more than twenty years, I am examining more closely now how much our attitudes must be influenced by our 'convict past'. It is less than 140 years since Australia ceased being a penal settlement of England, and during those eighty years from 1788 to 1868 more than 160,000 men, women and children were transported from England and Ireland.

Knowing how rigidly punitive the general community attitude is towards those who are in prison today, I cannot help but reflect on how much that period of eighty years of Australian history still shapes our perspectives on crime and how it is best controlled. The views described earlier by Robert Hughes that the English lawmakers "wished not only to get rid of the 'criminal class' but if possible to forget about it" is still clearly prevalent in the attitude of many Australians today towards the operation of our criminal justice system and in particular our prison system. Many in our community would like to think of those in prison as 'out of sight, out of mind'.

PRISON: THE LAST RESORT

Two hundred years after the arrival of the First Fleet in Sydney Harbour, the justice and peace bodies of the Catholic, Anglican and Uniting Churches and the Australian Council of Churches undertook a review of the prison system in Australia, producing a report on Social Justice Sunday 1988, entitled: *Prison, The Last Resort*.

That report indicated that although Australia had developed in many respects over the previous 200 years, the heritage of our history as a penal settlement from 1788 through to 1868 had left its mark. From the beginning of white settlement, two groups of people have especially tested our notions of justice: the poor and the Aboriginal and Torres Strait Islander peoples. Recent prison statistics indicate that, in this regard, nothing much has changed in 200 years. Both groups continue to confront us with the relationship between individual criminal activity, rates of imprisonment, and deeper social inequalities in our society.

Unfortunately, since that report was produced, the national prison population of Australia has increased by 50 per cent in a period of just ten years (A.B.S., Australian Prison Census, January 2004).

IMPRISONMENT: A SHORT TERM SOLUTION

Australians generally need to make a cultural shift from an ideology that mistakenly thinks of imprisonment as a simple solution to many of the complex social problems confronting our society today: problems such as homelessness, family breakdown, child and sexual abuse, unemployment, intellectual disability, alcohol and drug addiction, and mental illness, all of which significantly underlie much individual criminal activity.

About one in five persons in prison throughout Australia today are on remand, awaiting the court's examination of evidence against them to determine their innocence or guilt. Some of these are charged with serious offences certainly, but the vast majority are charged with property offences and, even if eventually convicted, are not likely to receive a custodial sentence. They are more likely to be fined, placed on probation or required to undertake some community alternative, such as unpaid community work or drug treatment or counselling.

Many of those who are refused bail are placed on remand, sometimes for months on end, because they have no fixed place of abode. They are placed in prison not because of their criminality, but because of their homelessness. This particularly applies to younger offenders, often leaving home in rural areas, looking for employment opportunities in larger urban areas.

Some commentators suggest that the experience will 'teach them a lesson'. Unfortunately, all too often the lesson that they learn from waiting for their court appearance in a remand facility is of a completely different nature. Almost without exception, the remand facilities around the country contain the very worst conditions.

RESTORATIVE JUSTICE

Despite successive governments efforts to create alternatives to custody, Victoria's prison population continues to hit record levels. On the 14th June, 2003, 3780 people were held in custody in adult prisons, the highest number ever on record, This trend reflects increased pressures from court sentencing practices on correctional services throughout the western world. It is an alarming statistic, given the major initiatives towards diversion currently undertaken by the Victorian Government aimed directly at reversing this trend.

At the same time, there is a perceived significant community dissatisfaction with the operation of the criminal justice system and a tendency for public expressions of harsher punishments. We have an opportunity to reverse the current trend.

One idea is powerful enough to begin to reverse this expansion: **Restorative Justice**.

The correctional system is founded on the principles of using graduated degrees of loss of liberty to "correct" the offender, with the ultimate punishment that of humane containment in prison. Reforms within this paradigm have failed to prevent its expansion.

Restorative Justice is focused on the harm caused by crime to the offender, victims and community. It challenges the offender, victims and community to actively respond by healing some of this harm, through making amends and putting things right by the victims and the communities affected.

Meeting their victims is one of the hardest challenges any offender can face. Taking full responsibility for your actions and the harm they have caused is tough justice. A critical element in our vision is to lead a powerful guiding coalition in a change effort designed to transform the public's standard image of justice from punishment to making amends.

One of the Australian programs that incorporates restorative justice principles in dealing with juvenile crime is called: **Community Justice**, which is a program of Jesuit Social Services in Melbourne.

The aim is to bring together the young person who has offended, the family, community members and the victim of the crime to discuss ways for the young person to make amends for the harm done by the current offending behaviour.

The program provides the Children's Court with an alternative pre-sentencing option that aims to divert young people from further or more serious offending. This Group Conference that involves all parties is held to encourage young people to take responsibility for their offending behaviour and at the same time to enhance the rights of victims. The young person is provided the opportunity of making amends to the victim and the community and each person participating is provided a voice to explain how they have been affected.

Restorative Justice is a new way of thinking about crime and its impact on our community and offers a new vision for the future, and of a criminal justice system designed around the goal of making things right!

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