

A Christian Approach to Conflict Resolution

a contribution to the seminar

“What does the Lord require of Christians in conflict?”

by

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There are disadvantages to being listed by a judicial title in a conference programme. You are immediately pigeon-holed, and sometimes some strange strings go with the label, as in the anonymous, but probably American, quotation:

“Arguing with a Judge is like wrestling with a pig in mud. The longer it goes on, the more you realise that the pig likes it.”

I hope you like mud.

Professor Wade’s excellent paper addresses directly the question for this seminar, *“What does the Lord require of Christians in conflict?”* It provides a scholarly and most helpful coverage of the issues. I wish to focus more closely on the subject of mediation touched on by Professor Wade, and specifically **to consider restorative justice as a New Testament or Christian approach to conflict resolution.**

Restorative justice might be said to be the close cousin of alternative dispute resolution, bringing to bear in the criminal justice context similar principles to those of mediation and other ADR procedures in the civil context. I explored those parallels in a paper given in Perth in 1997^[i] and will not repeat them here. In New Zealand and in some Australian States a form of restorative justice is seen in the Youth Justice procedure of the family group conference with its emphasis on the meeting between victim and offender (and their supporters), the importance of reconciliation, of restitution to the victim as a primary objective, and of negotiated rather than imposed outcomes. In New Zealand what are called diversionary conferences can with the agreement of all parties produce outcomes that are consensual and do not require approval by the Youth Court. Court directed conferences usually result in acceptance of the conference plan without the need for formal court orders. I should clarify that denied cases have to be proved using the adversary system in the same way as for adults.

There are now some government-funded pilot schemes for restorative justice for adults, building on the concept of community group conferences which I advocated in 1994.^[ii] In addition there are models of restorative justice that are not related at all to court procedures, such as victim-offender mediation that occurs in prisons, and school based restorative justice as trialled first in Queensland and then in New Zealand. There is available a very substantial body of international writing on the subject of restorative justice and the 10th UN Congress on Crime in 1999 gave it considerable support.

Why do I characterise restorative justice as a Christian approach to conflict resolution? There are five principal parts to my answer.

1. **There is a distinctly “New Testament” flavour to its rejection of legalism and formalism in favour of the personal encounter and engagement of those directly affected.**

Restorative justice is based outside courts, even where courts have a supervisory role. It is free from the rituals of the courtroom and the formalism of the Pharisees. If a lawyer is present it is not as an advocate but as an advisor and supporter. Professionals do not run or own the process. Given that we lawyers have for centuries tended to act as though we had a monopoly on justice, it comes as a bit of a shock to find that the parties can often, if not usually, work it out better themselves! Is there a parallel with St Paul's question?

“Where is the wise man? Where is the scholar? ... Has not God made foolish the wisdom of the world? 1 Cor 1:20

Perhaps the very procedures of which western lawyers have been so proud have prevented God from being at work in our justice systems. A plea of Not Guilty may not mean “I did not do it” but rather “You prove it!”. Elsewhere I have argued^[iii] that this approach to pleading does the reverse of encouraging personal accountability: it encourages people to deny the charge and see if they can “get off”. As it was put by a senior Canadian law officer Brent Cotter QC^[iv], then Deputy Minister of Justice of Saskatchewan, “In a family, such behaviour would be considered dysfunctional. In a community it is still dysfunctional.”

So we must ask ourselves whether Christ would have supported a system that produced “adversaries” and encouraged denial, gamesmanship and ritual. The love of God and the support of a God who can hold us in his arms can only be gained by an experience of a living person, Jesus Christ, not by book learning or being instructed by authority figures. In a similar way restorative justice relies for its power not on just following orders or directions but on the *experience* of an encounter with a living person, an encounter in which grief or sorrow can be shared, some responsibility accepted, and a change of heart made possible.

Of course, it would be a mistake to pretend that the Old Testament does not contain the seeds of restorative justice, just as it contains the seeds of the New Testament. One of the most influential books on restorative justice has been *Changing Lenses* written in 1990 by Howard Zehr, a gentle Mennonite Christian from Virginia, USA who has visited New Zealand several times now. Zehr – in my view, a modern prophet of justice - finds some support for restorative justice in the Old Testament concept of shalom, which refers to peace between people and God as well as between people themselves on a variety of levels.^[v] He builds a picture of restorative justice as healing justice and as peace making in the spirit of shalom. But there is also the darker side of Old Testament justice – where the loss of one eye allowed^[vi] the plucking out of another, where terrible retribution could be wrought upon people guilty only by association, where adultery was a capital offence, where redemption often seemed impossible. Christ pointed us in the completely opposite direction – turn the other cheek, meet violence with love, “love one another as I have loved you”.

2. Restorative justice allows a place for grace.

It is very easy in a world of high achievers like the legal profession to be caught up in the belief that we succeed in life by our own efforts. That of course is not the Christian message. After reading Phillip Yansey's wonderful book *What's So Amazing About Grace?* it occurred to me that it was often God's grace that was at work in restorative justice. In such a context an expression of forgiveness cannot be something *expected* of victims - it is theirs to give if they feel it appropriate at the time, and they sometimes do. More often, though, there is a place for grace, that unearned generosity of spirit, and its transforming power.

I will give but one example. It relates to a young man in Wellington who at the age of 16 committed two burglaries. He had been in trouble before and been to family group conferences but this time he didn't wait around; he took off for the South Island and the police lost contact with him. Two years later something had changed in his life. His partner was pregnant and he was going to become a father. He wanted to clean up his past and put behind him the mistakes that he had made so that they did not come back to haunt his new family. He handed himself into the police and asked that a family group conference be arranged where he could meet the people who owned the two houses he had burgled. He had a job and he had worked out that he could repay the damage suffered by these two families (which was quite a lot of money – about \$1500) at \$50 per week. He put forward that proposal and on a whiteboard set out his entire budget including expected expenses for when the baby arrived. He also offered to do community service in addition to paying this reparation.

The victims were so impressed that they said they wanted the \$1500 spent not on themselves but on the baby, to make sure that it had the start in life which the young offender had never been given. They also said that instead of community service they wanted him and his partner to attend a parenting course. They wanted to see broken the cycle in which he had been caught up from a young age. The victims also wanted to be kept informed and it was agreed that when the baby was six months old the young man would write a letter to them to tell them how things had been going for him and his new family.

The gracious response of those victims was, for Christians, an expression of the love of God – and for non-Christians perhaps an expression of that love which desires the good of the other. The victim who does not demand their “pound of flesh” or an eye for the eye they have lost is freeing both sides from the cycle of action and reaction, of “take” and “payback”. The victim who wants to see a better outcome for both themselves and the offender exhibits a generosity of spirit in an act of grace. Like all human beings offenders do not expect such generosity and their defences can be overcome by grace. As Yansey puts it:^[vii]

“Justice has a good and righteous and rational kind of power. The power of grace is different: unworldly, transforming, supernatural.”

Only the gracious power of love can break the cycle of violence, anger and revenge. Is this not what we should be seeking for our system of justice?

3. It expresses other Christian values, or makes possible their expression.

Quite apart from the possibility of forgiveness and grace, a restorative justice conference encourages the expression of remorse and a willingness to change – ie repentance. This often follows from the expression of the victim’s distress and anger at what he/she has suffered, through which the offender can come to see the crime in human terms that bypass rationalisations like “it’s just property”, or “they can afford it” or “he deserved it”. As we would expect, repentance in turn allows the gracious response, or an expression of forgiveness, and from there the parties tend naturally to look to the future and how things can be changed for the better, both for the victim and for the offender. Healing can begin to occur in a meaningful way, for all parties, especially when offenders are enabled to deal with their sense of guilt and victims are able to be freed from the worries and anxiety of the past and start rebuilding their lives.

Repentance, forgiveness, reconciliation, renewal, healing - all these find a place in restorative justice.

How many of these factors are to be found in the adversary model? Precious few, I suggest, unless by accident. The parties are strongly discouraged from meeting except in court, offenders are told to admit nothing and certainly not to apologise, victims never get a chance to put their questions (“Why me? Why did you do it? Are you going to do it again?”), the process encourages denial rather than acceptance of responsibility, and accountability is impersonal and often rejected.

Even punishment, the intended means of control, can be shrugged off as unjustified (ie the offender becomes a victim), or meaningless (“I don’t care what you do to me”). As I have often stressed, punishment is not ruled out in restorative justice, and most conference plans have a punitive element, but punishment is not the overriding objective which it is in the traditional system; rather the emphasis is on making things right.

Perhaps it is a mistake to call the adversary model “the traditional system”. In the scale of things it is a relatively recent arrival. For tribal societies, without the central State, justice necessarily resided in the community and focussed on preventing feuds and generally keeping the peace. In such systems the victim had a central role and restoring the victim (and also the offender) to a place of respect was the key to restoring justice. Restorative justice can therefore be seen as a more natural form of justice, both within families and within communities; it is second nature to most indigenous peoples today, including Maori.^[viii]

4. Restorative justice reflects a partnership model rather than a dominator model.

I take these terms from Riane Eisler's *The Chalice and the Blade: Our History, Our Future*.^[ix] This powerful American writer tells of the Minoan people who lived in peace on the island of Crete for two or three thousand years. At about 2000 BC their population was some 100,000. She describes theirs as a "partnership" culture, where men and women could be gods, leaders, guides and protectors. It was a culture amazingly rich in the arts and with an advanced standard of living. Crete was, in Homer's words, "a rich and lovely land".^[x] It was a place where "the economy prospered and the arts flourished".^[xi]

The author then contrasts this partnership culture with the "dominator" culture – "in which men must keep conquering – be it nature, women, or other men" (page 171). I do not know whether Eisler is a Christian but I was fascinated to see her description of Christ as teaching and living out partnership values, as contrasted with the Christian Church which very quickly reverted to the hierarchical, patriarchal, authoritarian model that Eisler suggests goes hand in hand with male violence in the dominator model.

Eisler does not limit herself to Minoan Crete, but goes right back to the Neolithic age and summarises the changing view of that past found in modern writers:

'The old view was that the earliest human kinship (and later economic relations) developed from men hunting and killing. The new view is that the foundations for social organisation came from mothers and children sharing. The old view was of prehistory as the story of "man the hunter-warrior". The new view is of both women and men using our unique human faculties to support and enhance life. ...

In sum, under the new view of cultural evolution, male dominance, male violence, and authoritarianism are not inevitable, eternal givens. And rather than being just a "utopian dream", a more peaceful and equalitarian world is a real possibility for our future.' (page 73)

While her book does not address issues of criminal justice, through it I came to see restorative justice as inherently a democratic, partnership model, a liberating force with a Christian foundation, and the adversary system as essentially an autocratic, Old Testament, dominator model that relies on control. I also came to realise that the debate about restorative justice reflects much wider cultural issues concerning the way in which people should relate to and govern each other.

5. Christians are called to avoid revenge, and to leave judgment for sin and evil to God.

Ten years ago Auckland University Chaplain, Revd. Ray Galvin gave a sermon on prison reform and the gospel.^[xii] I cannot improve on what he had to say about revenge:

If there is to be vengeance for human sin it is for God to mete out, for God is the only perfect judge. ... To take revenge and demand pound for pound is to down a blind alley. No good ever came from it. It simply multiplies evil. It also presupposes that the one who takes revenge is morally superior to the one avenged.

In this vein I found one of the most powerful passages in *What's So Amazing About Grace?* to be the analysis of the confrontation between Jesus and the Pharisees concerning the stoning of the woman caught in adultery, ending with this reminder of where we all stand:

"Thus in a brilliant stroke Jesus replaces the two assumed categories, righteous and guilty, with two different categories: sinners who admit, and sinners who deny."^[xiii]

There is a parallel here too with restorative justice for it is a process that allows the responsibility of different people to be brought in to the equation, rather than focussing exclusively on the guilt of one person, the offender. It is not unheard of for victims to respond at some point by acknowledging that they too might have handled things differently. That happened in my court just this week. Particularly in Youth Justice the spotlight often turns on the role of the family – how have they let this develop, what were they doing about the growing problem, and what part will they play in putting things right? Even officialdom can be called to account: - Why was it necessary to make an arrest for such a minor matter? What has the Care and Protection division done about the complaints of neglect and

violence towards this young person? Satisfactory answers may be hard to find, but at least it is possible to consider the wider picture, while at the same time holding offenders accountable in a meaningful way.

At the same time Revd Galvin also reminded us that we should learn to see Christ in the prisoners, for “Jesus said ... that whenever we visit and comfort a prisoner, we visit and comfort Christ himself. The prisoners, the poor, the sick and the lonely are all given this special status in the gospel. When we meet them, we meet Christ.” I believe that this encourages us to remember that Jesus is in the people we process as criminals, just as he is in us, and for that reason if for no other they are to be treated with dignity and respect.

The passage from Matthew 25 to which Revd Galvin refers comes near the end of Jesus’ ministry, a few days before his death. It is significant that near the beginning of his public ministry, in his home town of Nazareth, Jesus was handed the scroll of the prophet Isaiah. Unrolling it he found the place where it was written:

“The spirit of the Lord is on me,
because he has anointed me
to preach good news to the poor.
He has sent me to proclaim freedom for the prisoners
and recovery of sight for the blind,
to release the oppressed,
to proclaim the year of the Lord’s favour.”^[xiv]

“Today” said Jesus, “this scripture is fulfilled in your hearing.”^[xv]

I conclude with a question. Have *we* as followers of Christ been anointed to preach good news to the poor, to proclaim freedom for the prisoners, new sight for the blind and release from oppression? If so perhaps we need to reassess our criminal justice system and asks some basic questions about its dependence upon punishment (and especially prisons) as a means of control, whether it does deliver justice to the poor (and in particular, to victims), whether we are too easily blinded by the enjoyment (and the dust) of forensic battle, and whether our legal systems are instruments of liberation or of oppression.

Now, let us have some mud wrestling!

[i] “Restorative Justice - a Peace Making Process”, a paper presented to the *Fifth International LEADR Conference on Alternative Dispute Resolution* held in Perth, Australia 9-11 May 1997.

[ii] “The New Zealand Youth Court: a Model for Development in Other Courts?” *Journal of Judicial Administration* Vol. 4 No. 1 (August 1994) p 33; republished 1996 as chapter 3 of (Ed. Galaway B. & Hudson J.) *Restorative Justice: International Perspectives*. Criminal Justice Press: New York.

[iii] “Accountability in the Community: Taking Responsibility for Offending” *Re-Thinking Criminal Justice Vol. 1*. Legal Research Foundation: Auckland, 1995.

[iv] Restorative Justice Conference held at Saskatoon, Canada, in March 1995

[v] See chapter 8

[vi] I acknowledge that the New Testament interpretation of the Old has been disputed by Jewish scholars, including no less a person than Lord Jakobovits, then Chief Rabbi of the United Kingdom, in his

letter to *The Times* 20 February 1991. He wrote that the concept of an eye for an eye was introduced to prevent excessive retribution and has traditionally been construed as requiring monetary compensation to be paid “instead of” the lost eye.

[vii] page 103

[viii] Their representations were very influential in shaping our Youth Justice legislation, the Children, Young Persons and Their Families Act 1989.

[ix] HarperCollins, San Francisco, 1987

[x] Eisler, page 56

[xi] Eisler page 31

[xii] Auckland District Law Society’s Annual Church Service, 1 February 1991.

[xiii] page 182

[xiv] Isaiah 61:1-2

[xv] Luke 4:21