

Steps to restorative justice for serious offenders*

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Abstract

The process through which serious offenders come to terms with their offending is reflected in Psalm 51 composed 3,000 years ago and parallels the processes through which people come to terms with a variety of stressful events. This paper draws on historical and modern evidence to outline this process and to consider its implications for the use of restorative justice with serious offenders.

1 Changing the way we think about something

Most people are aware of Paul's conversion experience on the road to Damascus even if they are not familiar with the detail of Luke's account of it (Acts 9:1-9) as it has come to represent any sudden conversion from one way of thinking to another. But Luke describes many other conversions and also the difficulties some people, Peter in particular, had in coming to terms with the implications of Jesus' message. He describes how Peter denied that he knew Jesus while present at this trial (22:54-62) and says that Jesus appeared separately to Peter after his resurrection (24:34) while John (21:15-19) describes how Jesus asked Peter three times whether he loved him. English translations conceal the fact that Jesus used the words *agapas me* on the first two occasions but Peter replied using the weaker *phileo se*; so on the third occasion Jesus asked *phileis me* – starting where the offender is – and Peter again replied using *phileo se*. In spite being an inspiring leader of the early church Peter had difficulty in accepting that non-Jews could become Christians (Acts 10:9-16) and Paul describes a much later incident when Peter discriminated against non-Jewish Christians in Antioch (Galatians 2:11-14).

Though Paul's conversion experience has often been taken as the paradigm for *metanoia*, or a change in the way we think about things, the much slower changes in the way in which Peter thought about the church more closely reflect modern research into how people change the ways they think as they grow older (Anthony, 1973; Duska and Whelan, 1977; Goldman and Goldman, 1982; Jaques, 1986; Gilligan, 1993), sometimes following a stressful experience (Gilligan, 1993). Not everyone makes every possible change (Vander Ven, 1981) and

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Table 1: Phases in Psalm 51

Verses	Phase
1-2	Denial of responsibility
3-6	Realisation; coming to terms with the enormity of what he has done
7-11	Asking someone else to sort the problem out
12-15	Bargaining
16-17	Acceptance of responsibility

those who decline to make changes may lose their intellectual capacities sooner (Schaie and Willis, 2001). The differences between the ways in which women and men typically think about things (Gilligan et al., 1988; Tannen, 1992) may also influence the types of changes that people make.

2 Coming to terms with what we have done

Paul tells the Galatians (1:17-18) that, after his dramatic conversion experience, he spent three years in Arabia before his first visit to Jerusalem. This reflects what offenders told me about coming to terms with having committed serious offences like murder, the findings of modern research into how people respond after stressful events (Kubler-Ross, 1982; Osterweis et al., 1984; Parkes, 1998) and Psalm 51, written 3,000 years ago by David in the aftermath of his seduction of Bathsheba and murder of Uriah (2 Samuel 11 & 12:1-15) (Table 1).

Denial to realisation is a well-established phase following many stressful events; coming to terms with the enormity of what one has done frequently leads to profound despair among serious offenders which may result in suicide and which parallels the, normally less serious, depression which often follows stressful life events; many people go through a phase of anger; some may blame everyone else but themselves for the situation in which they find themselves; some people experience guilt about an event even where they have not been responsible for it; some offenders expect the prison service to provide the magic bullet in the form of an offending behaviour programme that will prevent them from re-offending. Many people bargain both during stressful events and afterwards as they are adjusting to them. With acceptance comes acceptance of the fact of the event and of any responsibility for it and for managing its consequences.

Accepting the caution in Osterweis et al. (1984, p. 49) that we should always think in terms of possibly overlapping phases rather than stages, not all of which may be present in every case, we have a framework whether taken from Psalm 51 or from modern research for measuring the progress people are making towards accepting responsibility for their offending.

3 The necessity of *metanoia*

In most accounts of their offending serious offenders said that at the time of the offence they believed, whether because of some personal difficulty, the nature of their relationships or the circumstances which surrounded the offence, that there was no other way forward. If there had been a short period between their offence and their conversation with me, they were more likely to deny their responsibility for their actions at the time and to be most amenable to some ‘cure’ which would prevent them from ever getting in the situation again. Where a longer period had elapsed, they were more likely to present their beliefs at the time as an ‘explanation’ for their behaviour coupled with an acknowledgement that they could have behaved differently, reflecting changes over time in the way they thought about the offence.

In order to accept responsibility for an event, we need to believe that we could have made a different choice even if at the time of the event we believed it was the only way forward. This applies to ‘good’ and ‘evil.’ The person who does good because they believe it is the only option cannot claim responsibility for the ‘good’ any more than the person who does evil for the same reason can accept responsibility for the ‘evil’ they have done.

Accepting responsibility for the consequences of an event is quite different; the English common law duty of care requires all citizens to act reasonably in the aftermath of an accident even if it was not our fault. If we fail to call an ambulance or leave people without helping them, even when the accident was not our fault, we are in breach of our common law duties. This is an important distinction; offenders can often see the consequences of their offending, for themselves, for their families and sometimes for their victims and their families as David did when the child born out of his adultery suffered an early death (2 Samuel 12:15-18) and they may be prepared to make reparation for the consequences of their actions. But that is quite different from accepting responsibility for their actions and, in the light of the accounts given to me by serious offenders, Psalm 51 was probably written much later after David had had time to come to terms with what he had done, not just the consequences of what he had done.

A change in the way the offender thinks about the situation is necessary because:

- offenders normally believe at the time of the offence that they have no choice but to commit the offence and
- in order to accept responsibility for an event, you have to believe that you had a choice.

Until an offender has come to see that they could have acted differently in the situation, they see the victim as a victim of circumstances, not of their actions. *Metanoia* is therefore the first prerequisite for restorative justice but there are obstacles to *metanoia* for a least two groups of offenders:

1. the 40% suffering from one or more forms of delayed development and
2. the 30% suffering from the effects of one or more experiences of trauma

neither of whom normally receive any services in prison to address these obstacles.

Some of those who suffer from delayed development do change the way they think about things in prison but normally at a much slower rate than people outside prison because prison, while stressful in its own way, does not present people with the stimulating events, whether stressful or not, which normally trigger experiences of *metanoia*. Some accounts of restorative justice suggest that meeting victims may trigger experiences of *metanoia* but, as there are several phases to the process of coming to terms with what one has done, introducing victims to offenders early on in the process risks disappointing victims or encouraging superficial *metanoia* in offenders. Those who have themselves been victims of trauma often cannot understand why they should do anything for their victims because no-one has ever done anything for them as victims; they can only change the way they think about their offending once they have been helped to change the way they think about their own traumatic experiences.

They may need support or resources to enable them to make further progress; they may be stimulated by the knowledge that their victim is prepared to meet them and forgive them into making changes in the way they think about their offending. But they are not ready and should not be offered restorative justice until they can see that they could have acted differently at the time of the offence.

4 Other prerequisites for restorative justice

The second prerequisite is to have completed the process of coming to terms with what they have done. People who engage in bargaining have yet to accept responsibility for their actions and so are not ready to enter the process of restorative justice.

The third prerequisite is forgiveness. As Maya Angelou has observed, if we do not forgive, we retain the bitterness that eats away at ourselves; it does nothing to those who have harmed us, only to ourselves. I learned this very early on. Everyone that I met in prison had been a victim in some way or another and those who were best able to deal with prison constructively had forgiven those who had harmed them. Like other victims (Marshall, 2005, p. 14–17), they still wanted to meet those who had harmed them, to hear what they had to say for themselves and to get some explanation for why they had chosen to harm them. But through forgiveness they were able to put aside the bitterness that might otherwise have eaten away at them and they were able to understand what their victims might be offering them through a restorative justice programme.

Those who have experienced one or more traumas in their lives often find it difficult to forgive those who have harmed them and may need considerable help

before they are able to think about forgiving others. Those who are consumed by guilt which gets in the way of their progress may need to forgive themselves before they can contemplate forgiving others.

True forgiveness does not excuse the offender or diminish the seriousness of the offence; forgiveness, like repentance, affirms the moral agency of the offender, their responsibility for the offence and their capacity to change the way they think about the offence. Forgiveness is as important for offenders as it is for victims if they wish fully to involve themselves in restorative justice. Until an offender has forgiven those who have harmed her/him, s/he cannot begin to understand what the victim is offering or what the victim is seeking from their repentance.

The fourth prerequisite is repentance, an acknowledgement of their responsibility for the offence based on the recognition that they could have acted differently at the time and a change in the ways they think about the world, the offence and their victim which will give their victim the hope that no-one else will ever have to go through what they did (Marshall, 2005, p. 16–17).

These steps may take several years to complete but victims of serious offences often take several years before they come to the point at which they can contemplate forgiving the offender because they have to go through the same process of coming to terms with a stressful event as the offender, albeit from the opposite perspective.

5 Conclusion

Restorative justice is practicable with many serious offenders but it cannot begin until some years after a conviction both because the process of coming to terms with what one has done takes time and because the majority of serious offenders suffer from problems which delay the process. It cannot therefore be offered as an alternative to serious offenders at the time of sentence. However, the seriousness of the offence often prompts a greater willingness to seek redemption later. As Jesus points out in the parable of the two debtors (Luke 7:40-43), those who are forgiven more are more likely to value that forgiveness.

6 Afterword

Offenders who reach the point at which they are prepared to enter into a restorative justice programme are unlikely to disclose that to any of the professionals who work in the criminal justice system; they are most likely to disclose it to a fellow prisoner. So offering serious offenders restorative justice is probably best facilitated by advertisements in the prison newspaper *Inside Time*, by arranging for prisoners who have taken part in a restorative justice programme to become peer supporters (much as the Samaritans use *Listeners* in prison) or by victims contacting offenders through mediators to make the suggestion. While the Prison Service, and in due course National Offender Management

Services, would have to agree the arrangements, formal arrangements to identify serious offenders who are ready for restorative justice would probably be counter-productive because of prisoners' reluctance to discuss personal material with professionals holding formal positions within National Offender Management Services.

References

- Anthony, S. (1973). *The discovery of death in childhood and after*. Penguin.
- Duska, R. and Whelan, M. (1977). *Moral Development: a Guide to Piaget and Kohlberg*. Gill and Macmillan.
- Gilligan, C. (1993). *In a Different Voice: psychological theory and women's development*. Harvard University Press.
- Gilligan, C., Ward, J. V., and Taylor, J. M., editors (1988). *Mapping the Moral Domain: a contribution of women's thinking to psychological theory and education*. Harvard University Press.
- Goldman, R. and Goldman, J. (1982). *Children's Sexual Thinking*. Routledge & Kegan Paul.
- Jaques, E. (1986). Development of intellectual capacity. *Journal of Applied Behavioural Science*, 22(4).
- Kubler-Ross, E. (1982). *Living with Death and Dying*. Souvenir.
- Marshall, C. D. (2005). Satisfying justice – victims, justice and the grain of the universe. *Justice Reflections*, 10(69):1–19. Reprinted from Australian Theological Review May 2005.
- Osterweis, M., Solomon, F., and Green, M., editors (1984). *Bereavement: reactions, consequences and care*. National Academy Press.
- Parkes, C. M. (1998). *Bereavement: Studies of Grief in Adult Life*. Penguin.
- Schaie, K. W. and Willis, S. L. (2001). *Adult development and aging*. Prentice Hall.
- Tannen, D. (1992). *You just don't understand*. Virago.
- Vander Ven, K. (1981). Patterns of career development in group care. In Ainsworth, F. and Fulcher, L., editors, *Group Care for Children: concept and issues*. Tavistock.