

# RESTORATIVE vs. RETRIBUTIVE JUSTICE

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**E-MAIL FROM AMERICA, THE PSYCHOTHERAPY REVIEW 1(6):  
259-260. NOVEMBER, 1999**

In 1992, the Chief Judge of the New York State, Judge Sol Wachtler, was arrested and convicted of harassing a former lover. He served eleven months in a medium-security Federal prison designed for violent criminals, ending what was forecast to be a brilliant political career. Political commentators had already predicted that he would be the next governor of New York State. This case raises a number of issues, not the least of which is that Judge Wachtler suffered from a serious mood disorder while he was engaged in the acts which culminated in his arrest (Wachtler, 1997). But for the purposes of this column I mention this case only to illustrate an extremely pertinent question, that is, "What possible good was served by such an imprisonment and what kind of justice does such punishment serve?".

This is not an irrelevant question for psychotherapists today. In the United States an increasingly high proportion of the population, particularly the African-American male population, spend time in jail. Of women in prison, 75% of them are mothers and 88% of their children are under the age of 5. It is estimated that in 1992 there were 167,000 children whose mothers were imprisoned. In 1992, there were more than 100,000 children in correctional institutions and the number continues to grow (Forer, 1994). This is on the offender side of the equation. The victim side of the crime equation is even more dramatic. The U. S. Department of Justice estimates that 83% of the population will be victims of violent crime sometime in their lifetime. Many of these victims will go on to develop symptoms for which they will seek help from psychiatrists and psychotherapists, and other medical practitioners. Beneath their anxiety, depression, and self-destructive behavior will be found three overlapping crises: a crisis of self-identity, a crisis of meaning, and a crisis of relationship. For healing to occur, wholeness, autonomy, order, and connection must be restored (Zehr 1994). Psychotherapists must struggle with how to facilitate such healing internally when external events remain unchanged, unresolved, and often unexpressed.

When we recognize that many of our patients' disorders are related to real, traumatic, and often criminal offenses perpetrated against them, we are compelled, like them, toward a search for justice. But our present system of justice does not seem to be helping the victims, who are largely excluded from meaningful participation and are frequently revictimized by the legal process. Nor does it help the offenders who do *not* learn in our prison systems the kinds of behaviors that make them better and more responsible citizens, but instead seem to make continuing criminal perpetration more likely (Challeen 1986, Forer 1994, Gilligan, 1996).

Reformers in the field of penology are looking at alternative forms of achieving justice and reviewing the history of how our present system has come to dominate such an important part of our world view (Zehr 1990, Bianchi 1995). The existing criminal justice system is based largely on the idea of retribution, seeking to answer three questions: 1) What laws were broken?, 2) Who "done" it?, 3) What punishment do they deserve?. Crime is breaking the rules, breaking the rules is a violation of the state and the state is the victim. The real victims are not even a significant part of the equation. Retributive justice is preoccupied with blame and pain and is primarily negative and backward-looking.

Howard Zehr, Professor of sociology and restorative justice at Eastern Mennonite University's Conflict Transformation Program, has described the differences between retributive and "restorative" justice. In a restorative system of justice, the fundamental questions are entirely different and focus on the restoration of relationship as well as individual and social healing. The first question is "Who has been hurt?". Once established, the next consideration is "What are the needs of victims, offenders, and communities?" The last consideration is "What are the obligations and whose are they?" Under such guidelines the aim of justice is to meet needs and promote healing of a) victims, b) the community, c) offenders, and d) of relationships between them.

The costs of crime are far too high – for all of us. As therapists we know only too well the cost of a life built around the pursuit of vengeance. One generation takes revenge against the previous by punishing the next. The crimes that occur within the secrecy of the family are as serious as those that fill the tabloids and these are often the crimes most familiar to us. But there is continuity between crime at home and crime in the streets, a cycle of relentless violence that breeds only hatred, disconnection, and a search for revenge. As experts in human behavior, we have an obligation to educate our society about the needs of victims for empowerment and engagement in the process of seeking justice. We also must remind society about the age-old human needs that we see manifest in our offices every day: the need for confession, remorse, atonement, restitution and forgiveness as essential components of human healing. But this requires some kind of engagement with the offenders

that are being tried around the world. On an individual level, various Victim-Offender Reconciliation Programs are reporting positive effects on the mental state of the victims and a decrease in recidivism in the offenders. In these programs, victims and offenders are brought together with mediators who can help the parties to express and acknowledge the wrongs, decide what might help to make things “right”, and to discuss future intentions. On a social level, South Africa provides us with one example of an entire country struggling with “Truth and Reconciliation”. In a restorative system of justice, there is a recognition that violations create obligations and these obligations are bilateral – the offender must acknowledge and take responsibility for the harm done to victims and communities, and society acknowledges a responsibility to both victims and offenders.

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