

RESTORATIVE JUSTICE: **THE ROLE OF THE ROTARY**

The matter of the treatment of offenders by the Courts is a subject of perennial public concern and discussion. The public needs to be assured that the Courts in sentencing offenders do so with the primary objective of protecting the public from offenders. To this end the prevailing public thinking is that the longer the sentence of imprisonment, the more effective it will be as a deterrent to the particular offender and to others who might wish to offend.

In this regard the Caymanian public is perhaps typical of Caribbean and Regional countries - those which are so impressively represented by the distinguished delegates to this Rotary conference of District 7020.

Just this week past, our local newspaper the Caymanian Compass carried a lead article describing a petition by some citizens of Grand Cayman calling for longer jail sentences for burglary offences.

While there are and will be offenders who can effectively be dealt with only by long periods of incarceration, universal experience has shown, however, that imprisonment by itself is no ultimate deterrent to crime.

The theme of my presentation to you today will be that the ultimate objective must be as much to restore as it is to punish.

And from the point of view of your mission as Rotarians, it will be to examine the kind of responsibility which you might undertake in the restorative process.

I think you will find that there are great areas of need in which the traditional Rotary pledge to act with consistency, credibility and continuity would find ready scope for application.

To begin let me outline for you philosophical thinking behind the principles of sentencing.

An offender is sentenced having regard to several factors and considerations. These arise from the nature of the offence, the circumstances under which it was committed, the penalties

prescribed by law, the impact upon the victim, the character of the offender and his or her personal circumstances.

With these factors in mind, an essential starting point must be the examination of the objectives of sentencing.

I have found that the Canadian Criminal Code contains a useful summary of them.¹

"The fundamental purpose of sentencing is to contribute, along with crime prevention measures, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives;

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons who would do so from committing offences;
- (c) to separate offenders from society, where necessary
- (d) to assist in rehabilitating offenders;

- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community.

Most cases present a judge with the need to address more than one of those objectives and cases often arise which require that the entire complex of those objectives be addressed when sentence is being handed down.

This sometimes happens even when the gravity of the offence before the Court, the need to denounce the criminal conduct involved and the desirability of a uniform approach to sentencing when compared to other cases, dictate that a sentence of immediate imprisonment must be imposed.

Examples of this, and ones unfortunately very pertinent in the Cayman context, are the cases involving the kind of recidivist

¹ Section 718 of the Canadian Criminal Code

burglars who are the focus of concern of the citizens' petition earlier mentioned.

While in such cases immediate imprisonment is indicated in order to denounce the offence, the questions will be: for how long to punish the offender himself and to deter others? What programs are to be put in place to help rehabilitate the offender so that he fits into society when he is released; as a distinct aspect of rehabilitation, what treatment can be prescribed if, as so often is the case, the burglary is committed only to get the means to sustain a drug habit? What treatment can be prescribed to inculcate a lasting sense of contrition and acknowledgement of the harm done to others and, of course, what orders can be made to require the burglar to make reparations to the victims?

These are all questions which point to the modern definition of a system of criminal justice which is more than just punitive. These are questions which require the definition of a system which can perhaps best be described as "restorative".

The invention of this concept of restoration is not one to which I can lay claim.

In April of last year a Conference of Nations was held in London, England to consider the subject of "Restorative Justice".

A centerpiece of the conference was a book entitled "Restorative Justice" by Helen Bowen and Jim Consedine.²

This work posits the questions not in terms firstly of how do we punish the offender, but how do we restore the well-being of the victim; the sense of responsibility and of humanity of the offender and the sense of security of the community?

As I mentioned earlier, the empiric evidence indicates that a new approach is required. The statistics also bear this out. They show that around the globe, imprisonment has not led to a reduction in crime but instead only to an increase in imprisonment.

² Published by Ploughshares publications. Jim Consedine has been a prison chaplin for more than twenty years and is New Zealand's national co-ordinator of the Restorative Justice Network. Helen Bowen has been a practising criminal lawyer for twenty years and is a trained facilitator for The New Zealand Te Oritenga Restorative Justice Court and the Justice Alternatives.

The United States of America leads the world in this trend: there for example in 1980 there were one half million persons in prison. By the end of 1997 there were 1.7 million. In the year 2000 there will be 2 million Americans in jail. That is one in every 150 Americans.

This trend is not peculiar to the United States among democratic countries. Throughout western Europe the increasing ratio is almost as pronounced.

New Zealand as a further example is second only to the United States in the rate of imprisonment of its population.³

In that country however, a new approach is taking root.

It is an approach which assumes that the wider society would support a system that encourages those who are guilty to admit their guilt and focus their attention on putting right the wrong they have done. The New Zealand approach recognises that the legal penal process, even for offenders who plead guilty, fails to confront offenders with the realities of their offending.

There for Youth Offenders (ie: those under 18 years of age) a Family Group Conference is required whenever the offence is admitted or proved for all offences except murder, manslaughter and rape.

The Family Group Conference is convened by a youth justice coordinator appointed by the Court. It is attended by the young offender; members of his family (including his extended family); the victim (often accompanied by supporters); a Youth advocate (if requested by the young offender); a police officer of the Youth division of the Force; a social worker (in certain cases only) and anyone else who members of the family would wish to be there. This category often includes a representative of a community organisation such as the service clubs.

The human dynamics involved in a Family Group Counselling depend and build upon the relationships between all those present, but the importance of the presence of the victim is repeatedly stressed.

³ Justice in the Community: The New Zealand Experience p.102 Chap. 7 in "Relational Justice, Repairing

As an experienced Youth Justice Co-ordinator has reported:⁴

"The crux of the Youth Justice system is *direct* involvement of the offender and the "offended against," eye-ball to eye-ball.

- - when victims and families farewell each other with smiles, handshakes and embraces, I know that justice has been served".

The New Zealand experiment in Youth Justice is reported as working well. In only the first year after implementation of the Family Group Counselling there was a reported decline of nearly 30 percent in the number of young people who had to be taken before the Court for sentencing after undergoing the Family Group Counselling.

Because of our ever abiding hope in the young, there is little wonder that the New Zealand experiment commenced with the

the Breach", edited by Jonathan Burnside and Nicola Baker, Waterside Press.

⁴ T. Stewart, The Youth Court in New Zealand; a New Model of Justice (Auckland, Legal Research Foundation, 1993)

Youth rather than with the older and perhaps more seasoned offenders.

But even with some older offenders, the resort to victim/offender mediation may be a worthwhile thing, depending on the offender, the victim and the circumstances of the case.

The following account of a case⁵ which went to mediation in Leeds, England illustrates the point:

"A woman and her eight year old son were the victims of an aggravated burglary, in which they were terrorised by the burglar. He received a prison sentence. The boy's nightmares persisted and as time drew near for the burglar to be released the woman became apprehensive that the burglar would return. She approached her local Advice Centre, who referred her to the local Mediation and Reparation Service.

The mediators visited the offender who had just been released. He appeared to be upset to hear that his victim was still so worried. A

⁵ Cited in "Mediation, Reparation and Justice" by Nicola Baker: Chap. 5, Relational Justice (op. cit.) from a case study supplied by Leeds Mediation and Reparation Service.

meeting was arranged at the advice centre, at which the offender apologised and reassured the victim that he had no intention of returning to cause harm. The victim accepted the apology and reassurance, and said that she found the meeting helpful. The boy's nightmares stopped soon afterwards".

Taking that account at face value, it shows that even in a case where imprisonment was required, the benefits of restorative intervention were realised.

That overview of the new philosophy of restorative justice brings me to the specifics of how the Rotary can help.

Some if not all of you will be aware that at least one branch of Rotary is already involved in helping to realise the restorative process.

The Director of Vocational Services of the Rotary Club of Grand Cayman has referred for my consideration the 1st Offence Probation Programme which has been attended with great success

in Davenport, Ohio where it was first introduced by District Judge James Havercamp and the Davenport Rotary Club.

The idea began as a one-to-one probation program involving Rotary Club members as volunteer Probation Officers with emphasis on young offenders aged 18-25 years, charged with minor drug offences and having no previous arrests or convictions.

The programme seeks to provide one to one counselling or mentoring to these offenders. In the programme Rotarians serve as positive role models for the offenders and attempt to provide effective guidance by setting goals, stressing the importance of education and focussing their minds on careers.

The Rotarians' responsibilities are also to ensure that conditions of probation are complied with, such as drug and alcohol testing and restitution to victims. Rotarians also assume the responsibility of reporting any violations to the Court.

The proposal which I have seen from Rotary, Grand Cayman, is that this programme should be adopted here and that each programme would last six months per offender. Monthly reports

would be provided to the Courts on juveniles and, for young adult offenders, a report would be presented to Court a few weeks before the end of the probation period. Successful completion of the probation period would result in a clean record for the probationer. The alternative would be a criminal conviction and a fine or a term of imprisonment.

This, in my view, is a program which would be very much in keeping with the modern thinking and the theme of my presentation to you on Restorative Justice.

It is one that commends itself as being very well suited to the role which a community organisation such as The Rotary can be expected to undertake in the delivery of Justice. Indeed it is but an example, albeit a very telling example, of what that role could be, not only for working with young offenders, but with all offenders who meet the requirements for intervention by mediation and counselling.

Before it can be implemented in the Cayman Islands, the Rotary programme will require legislative changes to make it work.

What I can tell you now is that appropriate recommendations will therefore shortly be made with that objective in mind.

I am sure that the wider Society, in all the communities you represent, would support a system that encourages those who are guilty to admit their guilt and to focus their attention on putting right the wrong they have done. An acceptance of responsibility for one's own actions is an ideal that few would oppose. The strengthening of family and community-bond relationships could not be politically unpopular. A much better sense of reparation for victims is what the public has long sought - not retribution for retribution's sake. A lesser role for the State and a greater role for local communities is consistent with reforms which are underway in many Western countries.

There is also the prospect of fiscal savings from the reduced demands on prisons, although this may be offset against the cost of putting more social services resources into the community.

The message which I seek to impart to you is that there may well be an alternative approach to crime and punishment which could stem or possibly even turn the tide of criminal behaviour.

The approach involves identifying and dealing with one of the major underlying causes of the anti-social attitudes and behaviour which lead to crime.

This cause I have no hesitation in accepting stems from the failure of relationships whether in the home, in schools or in our institutions such as the prison or in the wider society.

The alternative approach requires that we harness all available resources towards mending the breaches.

I commend the Rotary for all the good work it has done as service organisation and urge you to explore the great potential that exists for your involvement in this alternative approach to the delivery of effective and restoration justice.

Hon. Anthony Smellie Q.C.
Chief Justice
The Cayman Islands

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