

An Eye for a Mediation Circle?

If you ask an American to picture what justice is they will most likely bring to mind an image of a blindfolded woman dressed in a bed sheet holding a scale. At present, the American justice system uses the model of "balancing the scales" to administer justice. Retributive justice is based on the principle that if an offender commits a certain crime, they get a certain punishment. If you are caught speeding, you will get a fine. If you kill someone, you will get a certain number of years in prison. And if you kill multiple people, you could be killed yourself.

Recently there has been a movement to change the American mentality. It calls for victim offender dialogue, offender responsibility, and community reconciliation. It returns dignity to the offender and gives the victim a voice. It alters the scales of justice so balance isn't achieved through crime and punishment, but through crime and reconciliation. Restorative justice is based on the idea that the felony was not committed only against the victim or solely by the offender, but that it is a community responsibility and should be handled as such.

Both forms of justice are at work right now in the American justice system. And while both retributive justice and restorative justice have their strengths, neither of them are the perfect form of justice in and of themselves. The retributive justice system focuses too much on the crime and not the person; restorative justice focuses too much on the person, not the offense committed and safety issues that may surround it. If these were to work together, the American justice system could find a new sense of balance—

not a balance based on crime and punishment, but a balance of the person and the punishment. Within the communities, courts, and prisons that comprise the American justice system, there is a place and purpose for both the punishment of retributive justice and the reconciliation of restorative justice.

The foundations of retributive justice were laid many years ago, dating back as far as the Old Testament and beyond. For generations human beings have used the principle of an “eye for an eye” as the basis for justice. As this idea was used and re-used over the years, it evolved from a primitive act that left the whole world blind to a sophisticated system that involves courts, trials, lawyers, sentences, guilty pleas, and prisons. In recent history it has been given the moniker “retributive justice”—a system that weighs the crime committed and its severity over all other factors present in the case (Von Wormer 22).

Retributive justice is the oldest and most common form of justice in the United States. It dates back to when the first white settlers arrived and implemented fines, whippings, and time in the stocks to punish petty crimes, and has never ceased being the law of the land throughout the two centuries following, surviving and thriving into the present, where life in prison and the death penalty are the status quo in our country. Many Americans have the mentality that justice equals revenge, and they view retributive justice as the means to give the criminal “what they deserve” and to “even the score” (Byron 307).

Retributive justice, although it is the most common form, is not, on its own, the most effective. Punishments like the death penalty do nothing to decrease murder rates in America, can hinder victims or their families from feeling closure, and can be unfair if

innocent people are sent to jail or put on death row for crimes others committed (King 3). In his article "Divine Justice," Jonathan Aitken, British cabinet member and former Member of Parliament, says that retributive justice can cause offenders to become hardened to the justice system and the world, leaving them alone, bitter, and angry. This form of justice prohibits compassion, forgiveness and reconciliation (Aitken 42).

The movement of restorative justice began relatively recently in comparison to retributive justice. It traces its roots to the 1970's with Mennonites in Ontario and Indiana who felt called to live out their faith and beliefs in Christ's teachings of grace and forgiveness in the communities around them (Zehr 3). But the Mennonites weren't the only group at work. In the 70's and 80's another program emerged that called for dialogue between offenders and their victims. This program, called Victim Offender Reconciliation Program, or VORP, works with the criminal and their victim to create conversation and restore relationships (Zehr 11).

The restorative justice movement is still in the early stages of development and has yet to be practiced widely in the United States, but in certain cases this approach to justice has been very effective. The VORP program reports that two-thirds of the cases they handle produce face to face meetings between victims and offenders and that of those cases over 95% of those cases end in a written agreement of reconciliation ("About" 1). Restorative justice gives offenders the ability to make amends, restore their sense of self, and re-enter into their communities. But the one problem with this plan lies in the hands of the offenders. The offender must be willing to make changes within themselves in order to admit guilt and rectify their actions. If they are averse to assuming responsibility for what has happened, reconciliation is impossible.

Some people who are victimized by crime feel that restitution is out of the question. The idea of reconciliation is especially difficult for those who have lost family members to murder, and many of these victims feel that the only way they can achieve closure is through lengthy prison sentences or even death for the offender. In Rachel King's book *Don't Kill in Our Names*, she tells the story of Carol, a woman whose husband was a police officer killed in the line of duty. Carol's husband Jerry, a Virginia state trooper from the Harrisonburg area, was shot and killed after a routine traffic stop by Dennis Eaton, a man who was fleeing the country (King 30). After his capture and arrest, Dennis was sent to trial and convicted of capital murder. Two weeks later he was sentenced to death. Carol, being a supporter of the death penalty, was satisfied when she heard of his sentencing. She felt that it would give her and her three children closure in the death of her husband (33). On the day that Dennis was to be put to death Carol and her son Justin went to the prison to witness the execution in hopes of finally achieving closure (49). Only through Dennis' execution could Carol and her children find peace. The scales of justice had been balanced for them—an eye for an eye, a life for a life.

While many victims feel that they could achieve closure through the conviction or execution of the person who wronged them, some do not. Other stories in King's book tell of how only reconciliation and dialogue could grant them peace. King tells the story of Marietta Jaeger, whose daughter was kidnapped and later killed by a man named Richard McCarthy (9). Marietta experienced many feelings of grief, anger, and rage immediately after her daughter, Susie, was taken. Being a devout Catholic, she relied on her faith to help her through. Marietta said she "Prayed for the kidnapper...I prayed for him even when I didn't want to" (qtd. on 10). After a few months, the kidnapper

contacted her on the phone. After this telephone encounter, Marietta had a revelation. She realized that if she pushed for the death penalty in this case, it would “only increase my desire for revenge and would not help me” (qtd. on 12). Only through dialogue and forgiveness would she ever achieve peace. The scales of justice would only find balance for Marietta through reconciliation and grace, not revenge.

Both retributive justice and restorative justice have strengths that can be accentuated if they are administered as one system. The punishment of retributive justice is necessary in order to demonstrate to the offender and the community that the act they performed was wrong. But the reconciliation of restorative justice is necessary in order to give them the message that they as people are not wrong. There was recently a program implemented in Alabama that created “Honor Dorms” within the jails and prisons. Inmates volunteered to live in intentional communities where they were accountable for their cleanliness, education, and conflict resolution (Culliver 60). The inmates that participated in this program showed lower discipline rates, more respect for each other and authority, and an increased sense of responsibility (Culliver 61).

If both models of justice work in unison, they could form a well-balanced and well-rounded justice system. For example, if a person commits murder, they should be put in prison as a fair punishment. This is the weight of retributive justice. But while they are in prison they should have opportunities given to them to change their ways, right their wrongs, and apologize for what they did. This is the weight of restorative justice. With more programs like the honor dorms in Alabama, there could be a balance of disciplining the offenders for what they have done, but at the same time rehabilitating and preparing them for what they could do in the future.

If the two sides of the scale are balanced, a justice system is created that sees the crime that was committed and delivers punishment accordingly, but also sees the person who committed the crime and grants compassion accordingly. The scales cannot find equilibrium based on crime and punishment any longer. A new balance is in order: a balance of accountability and grace, much like that demonstrated in the gospel; a balance of the offender's needs and the victim's needs; a balance of Old Testament teachings of an "eye for an eye" and New Testament teachings of mercy and forgiveness. The blindfolded, bed sheeted woman would get a makeover in American minds. The scales could finally achieve true balance.

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