

Pathways to Prison Abolition
Reflecting on the New Zealand Experience
ICOPA XI
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Introduction

I sometimes wonder whether western culture is obsessed with street crime and its effects. Practically every night we are inundated with television 'news' stories of crime committed in our localities and around the world. The first television news bulletin I saw when I arrived in the United States commenced with four 'street crime' crime stories. One was a murder arrest, while the other three were stories of assaults. Only then the bulletin moved onto other world issues. We need to reassess our understanding of crime and ask why it is that corporate crime and governmental crime advance virtually unhindered, while localised 'street crime' has become so central to so many. The answer lies somewhere in the mixed realm of our own hidden fears and our sense of powerlessness in the face of crime, and the immense power of corporate vested interests who gain so much from the current situation and control so much of what we view and read.

Corporate crime is endemic the world over. It hits us in so many ways: from the added-on costs in our supermarkets to the pollutants in the air we breathe, from the hidden cost of our banking and financial systems to the costs of medicines we take for our illnesses. The tentacles of corporate crime touch all these areas and many more. For example, through false and misleading advertising, just one tobacco company arguably kills and injures more people than all the street thugs put together. The New York Times claimed in an editorial 'that 400,000 Americans die annually from tobacco' (*23 September 1999*). We can assume that Third World tobacco deaths would double that figure. This is more than one million deaths per year. Is this not huge global crime? Are not many of these deaths preventable homicide? Will anyone go to prison for them? Not likely.

In Canada that same week, five companies in a world bulk vitamin cartel pleaded guilty to rigging Canadian markets over a period of years. They artificially inflated by up to 30% the price of bread, cereals, milk and other products. This theft cost every Canadian an average of \$10. After a plea bargain, the companies pleaded guilty and were fined \$88 million. This is probably about one fifth of the profits accrued in that time. No one went to prison yet they stole from several million people.

The year 2002 began with a whole new wave of huge corporate crime emerging. Starting with Enron, Tyco, Martha Stewart, Omnimedia and Supervalu, it later embroiled some of the biggest businesses in the world like Xerox and WorldCom. These two respectively overstated their earnings by a massive \$6.4 billion over five years, and \$3.8 billion over 15 months, in order to hold their share price. They committed massive corporate fraud. Is there any prospect of prison for anyone? Most unlikely.

The World Bank estimates that over one billion workers in Third World countries live on an income of less than one dollar per day. (*World Bank Development Report, 1995*). We are all complicit in this sin because we know that such starvation wages

enable you and me to benefit and buy their products for ridiculously low prices, at the same time as we put huge profits into corporate coffers. This is huge criminal offending against one sixth of the world's population and their families. Does anyone ever get charged with criminal offending for stealing from such workers? Never. Does anyone ever go to prison? Never. Am I truly my brother and sister's keeper? Not really, it seems.

The Iraqi people continue to be punished by the US Government and its allies for a war that was not of their making. The sanctions, which inflicted malnutrition, disease and death on hundreds of thousands of children and poor families, may have been legal, but they were highly immoral. Is the current war there not the height of criminality? Will any Western government officials ever be charged over such genocidal criminal behaviour? Of course not.

Many of these cases of corporate and governmental crime are perfectly legal, but fail every test of morality that seeks to promote justice and protect the **Common Good**. Too often ever increasing profit is the sole criteria for corporate policies. The rights of workers, their families and the needs of the wider community for gainful employment are ignored. As corporations focus on cheap labour markets and build in economic tax free zones, there is no sense of solidarity, little protection of human rights and the poor are the disposable fodder used to make even more money for an already rich elite. Such reprehensible behaviour is not just spiritually bankrupt but totally immoral according to God's law and Church social teaching. It is sinful. It clearly constitutes massive crime and exploitation against hundreds of thousands of workers. But most of it is perfectly legal. Such is the gap so often between law and morality.

The point I am making is that crime is far bigger and more pervasive than we normally perceive. There is huge crime committed at governmental, corporate, as well as street level. It is only the street level crime that the media and the wider public focus upon. It is for street level crime that prisons are built. With exceptions, it is for street level crime that the vast apparatus of the criminal justice system is primarily employed. It is time we started asking why this is so. Is the corporate agenda and the power of money so strong that even the justice system, one of the most sacred of societal structures, now primarily a puppet in their hands? More and more are now saying 'yes' to this understanding. They are seeing that it is usually only the poor who are going to prison and it is for the poor that new prisons are being built.

Modern society faces difficult and complex questions of how to deal with criminal offending and what to do about punishment. Punishment has become an obsession in many countries. A criminal justice system built primarily on a philosophy of vengeance and punishment does not produce fairness, either to victims or the offenders. We need to ask some fundamental questions about these matters. Given the incredible failure rate of the current retributive system, with between a 60-80 percent recidivist rate within two years of release, should **punishment** remain the primary focus of the criminal justice structure? Are we wasting millions of dollars on a self-defeating system which hits minorities unfairly, dehumanises those caught, and simply guarantees more crime?

In following a retributive model of criminal justice based primarily on punishment and vengeance, the world in the past two centuries has created a monster whose

pernicious effects are impacting everywhere. As social decay has taken on a more marked appearance in recent years and the number of poor has grown, imprisonment and harsher penalties have taken on a fresh urgency in the minds of many politicians and with parts of the wider public. Yet of all social policies, surely this is the most failed. Never has any social system been so expensive and failed so consistently as has the system of criminal justice and imprisonment we adhere to so slavishly. Where has it ever worked? Never has any tax dollar been less scrutinised for its fruitfulness than the criminal justice dollar.

With the advent of the global economy and the development of private prisons, the prison-industrial complex has emerged world-wide as a major development in the past 20 years. This is a frightening development because it constitutes a set of bureaucratic, political and economic interests that encourages increased spending on imprisonment, regardless of actual need. Crime rates may often be falling and positive alternatives available, but prison construction continues unabated. The prison-industrial complex is built on a lure of big money and guaranteed jobs. Its raw material is the same everywhere: the poor, the homeless, the mentally ill, drug addicts, alcoholics and a wide range of socially dysfunctional and sometimes violent people.

The Failure of Prisons

Prisons fail on practically every front. There are 10 obvious ways. They **fail to rehabilitate**. Nearly 80 percent of inmates re-offend again within a short time. They are extremely **expensive** at \$50-60 000 per head. Basically it is money wasted. They **undermine family life** and leave children minus a parent. They are **spiritually bankrupt** in that they suppress the growth and freedom of people and as such constitute a form of structural violence. They help **create more crime** by bonding similarly minded rejected members of society. Many fresh crimes are plotted by bored prisoners. They up-skill their graduates in **further anti-social techniques**, which makes prisons the most successful tertiary institutions in the world. They **breed violence** and are a principal recruitment location for gangs. They guarantee continued **high rates of re-offending**. They **punish the innocent** especially partners and children. They can leave ex-inmates and their families **stigmatised** for life. They fail in practically every positive human indicator scale. As a *1993 Time* magazine front cover boldly proclaimed, 'Each year jails take large numbers of hopeless people and turn them into bitter hopeless people'.

Prisons are the dinosaurs of the modern age. In no other area of human life and development do we allow 19th century philosophy and practice to dominate. In health, in education, in accounting and banking, in sport, in family life, in business management, evolving philosophies have seen changing patterns of social organisation more in keeping with modern thought. But not so when it comes to prisons. There we remain stuck in the 19th century. And the results show it.

Yet the world keeps building more. In terms of community usefulness, they are a systemic failure.

There are unquestionably a 'dangerous few' who need to be kept out of circulation for the safety of both themselves and the community. These may well number a few

hundred at any given time in most smaller countries. In larger countries, they probably measure between 5-10% of those currently imprisoned. But they should be kept in humane containment, treated with respect as befits human beings and encouraged to make constructive use of their time. Otherwise, imprisonment should be the very last line of resort in the sentencing process.

As to the notion of imprisonment, locking grown adults into a 6m x 4m cell for up to 22 hours a day for months or even years on end, should be abhorrent to any thinking person. Only the twisted could regard such a procedure as acceptable. Or those with a vested interest. Sadly, there are many groups in the community with a vested interest in maintaining the status quo regardless of how destructive the system might be. They include a majority of police, prison staff, the building and supply industries, politicians, some victims' groups, the law including many judges, criminal lawyers and law lecturers, the corporate media and security firms.

The penal system stands condemned by its own violence and unfairness. Indeed by its own inhumanity.

Justice and the Common Good

To move law away from providing for sectional interests only, we need to rediscover the centrality of the ancient wisdom that flowed from Christian teaching that protected **the Common Good**. This is the now much neglected principle that has attempted to hold the fabric of society together on some form of just basis for centuries. It is based on the notion that each person is a social being and reaches his or her potential in relationship with others. Collectively, they form a society. It is a notion that has validity outside its religious origins and can apply equally in the secular state.

But the Common Good cannot exist without the presence of four other principles that are essential to its realisation.

The first is **the principle of subsidiarity** supports a dispersal of authority as close to the grass roots as good government allows. It prefers local over central decision-making. It has everyone working at the level of their capacity.

The second is **the principle of solidarity** implies the interconnectedness of all human beings, one with the other, regardless of race, gender, culture, age or religion. We form one family. Solidarity teaches us to stand with one another, particularly when either of the final two principles are threatened - that of human rights or an option for the poor.

The third is **the protection of human rights**, our understanding of which has been accelerating this century. No longer are we able to dehumanise various groupings of people because of their differences to us. Each person now has certain legislated protection under charters from the United Nations which help protect the fabric of the Common Good.

The fourth is **an option for the poor**. By that is meant that the most vulnerable, the poorest economically, the most handicapped must be protected and respected if the Common Good is to be achieved.

Justice, Morality and the Law

Given this starting point, what then should be the relationship between the justice and the law? It is appropriate to start by quickly looking at what justice is since it is the basis from which we should act. In essence justice is an active and life giving virtue which defends and promotes the dignity of every living person and is concerned for the Common Good insofar as it is the guardian of relations between individuals and peoples. Justice is at the same time a moral and a legal concept in that it fosters an equitable sharing of burdens and benefits. It makes whole and leads, not to division, but reconciliation. At its deepest level it is rooted in love and is tempered by mercy.²

From justice flows the law which also has two dimensions, moral and legal. Law is built on morality and is never neutral, always reflecting a system of values. Fairness, truth, honesty, compassion and respect for people are the basic tenets of an acceptable morality that flows from justice and seeks to protect and enhance the Common Good.

Law and justice are not synonymous terms. The law is not sacrosanct and does not stand alone. What is sacrosanct is justice. In a secular society, for law and justice to meet, they have to be grounded in the principle of the Common Good. There is no other way. The law is the mechanism by which either the Common Good or sectional interests are achieved. Injustice occurs when the law is written by powerful groups with sectional interests. This is the basis for unjust law. Sectional interests defined much of the legislation in the past that discriminated against indigenous peoples. The laws relating to apartheid in South Africa are an obvious case. Just law and just government should define, defend and protect the Common Good. This is precisely what government in a true democracy should be about.

Imaging the New Millennium

Given that imprisonment is never going to be abolished overnight, what then are some of the real non-violent alternatives that could ideally lead to a gradual reduction in numbers being imprisoned would provide pathways to prison abolition? There are six that readily come to mind which, if expanded and properly resourced, would reduce re-offending, help offenders take responsibility for their behaviour, produce better more healing results for victims, offenders and the community, make communities healthier and safer, and be much more affordable.

- 1 DIVERSION.** The price of criminalising so many is something that needs to be looked seriously. Even when people have broken the law, why do they usually have to be prosecuted and criminalised? What positive purpose does it serve? In Japan, two thirds of all arrested people are diverted. They never come to court. Other options involving apology and restitution are taken. Diversion is a sign of maturity, of wisdom, of imagination.
- 2 HABILITATION CENTRES.** Following a government inquiry which reported in 1989, the New Zealand Government established a series of habilitation centres. Named from the Latin word *habilitare* - meaning to empower, to enable - the concept is based on the premise that the vast majority of offenders need to deal with their aggression, their sexual aberration, their drug or gambling or alcohol addictions, if they are going to make useful crime-free futures

² *ibid.*

themselves. The concept recognises that many have had little opportunity in the past for development. The recommendation from the Commission of Inquiry was that as soon as an offender had been sentenced to a custodial term, that person be given the option of going to prison or an habilitation centre to face their problems and deal with them during their sentence. It was recognised that most inmates needed an incentive to change. Engaging habilitative processes during their sentences away from the harsh prison culture was regarded as the best way forward. Regrettably the government chose not to implement the recommendation proposed but produced a mutated version which was always going to struggle for acceptance. It involved an inmate only becoming eligible for participation for the last three months of sentence and in addition imposed further probation requirements after release. The vast majority of inmates rejected it. In addition it was further strangled to death by bureaucratic red tape. As a counter to community based centres, the Department of Corrections set up their own habilitation centres focusing on addictions, sexual offenders and Maori *kaupapa* within the prisons. They appear to have been reasonably successful though no data has been produced yet as to their success rate.

- 3 **VICTIM/OFFENDER FACILITATION and COMMUNITY PANELS.** The former is a well tried process and involves a facilitated conference between the immediate victim and the offender. It has its limitations but can be very effective in some moderate and minor cases of offending. Community panels using a restorative philosophy can also be very constructive and provide a popular model in New Zealand. This has resulted in considerable reductions in the use of imprisonment. The UK introduced these panels for juveniles as its official alternative in 2001.
- 4 **RESTORATIVE CONFERENCING.** New Zealand has since 1989 had mandatory restorative conferencing for its juvenile offenders. This process involves a meeting convened by a skilled facilitator to which the victims and the offenders are invited. Both are encouraged to bring family and friends in support. At the conference, apology is given, context given and explanations made as to why the offence occurred. Reparation can be discussed. The victims are encouraged to express how the experience has affected them and have any questions answered. It is important for victims to be acknowledged, to be offered apology, to receive restitution when appropriate, to have basic fears allayed and questions answered. In other words, to experience justice. Usually a consensus is reached as to what to recommend to the judge. The offender signs the contract. Judges accept 93% of such contracts and most are fulfilled. No conviction is entered. Since 1989 the numbers of young offenders appearing before the courts has dropped dramatically. It is amazing how contrite and shamed most young offenders are after hearing of the effects of their actions on their victims. Most youth prisons and detention centres have closed. This has been a partial step towards abolition.

The secret of the New Zealand success lies in the 'carrot and stick' approach, which forms part of the restorative philosophy. The key to this is that all participants work out a recommended conference plan to which all must agree if at all possible. This is the incentive, the carrot, which encourages offenders to front up and take responsibility for what they have done. They get the chance to participate in a reparative outcome. The principle incentive for victims lies in the recognition and acknowledgement of the pain they have experienced. They get to hear an apology and to receive answers to such questions as 'why me?' 'Will it happen again?' Under the current retributive system, victims get virtually nothing.

The key to successful conferences and change involves participation and encounter between the parties. It is the dynamics of the group which provide the energy for the whole process. Anything which impedes this basic movement reduces the chances of real responsibility being taken

offenders, which in turn inhibits the possibilities for real change and future accountability. With the actual conference itself and the dynamics of it lie the greatest potential for real change and growth. This is why professionals other than the facilitator need to take a back seat.

Commencing in 2001, pilot processes for adults were conducted in four geographic areas: Auckland, Waitakere, Hamilton and Dunedin. Several hundred cases each year were referred to these pilots for restorative conferencing. Subsequent to the conclusion of the pilot schemes, the government decided to make restorative justice mainstream and more widely available. The Sentencing Act 2002 contains no fewer than 11 references to restorative justice. So too the Victims Rights Act 2002. With some exceptions, almost all adult criminal cases are eligible for RJ, including serious cases. An official pilot involving Samoan cases only has also been launched.

In the official evaluation of the pilot scheme, 92 percent of victims said they were pleased to have taken part. Nearly 90 percent could recall the conference 12 months later, with 67 percent remaining very positive. Two thirds said they were satisfied with the eventual court sentence. The reconviction rate of conferenced offenders (32 percent) was lower than the average rate for matched comparison groups. (36 percent) Although small the difference was statistically significant. Most significantly from an abolitionist's viewpoint, fewer conferenced offenders (13.7%) were sentenced to imprisonment, against 19% for court comparison offenders.

Regrettably, because of longer prison sentences being imposed which were also legislated for by the government, prison numbers continue to rise in New Zealand. From 4500 in 1995, they have burgeoned out to 7600 by 2005, making NZ the second most imprisoned western country per capita behind the US. Regrettably, the hoped for decline in prison numbers commiserate with declining crime rates and the introduction of restorative justice over 10 years has not materialised because of mandatory sentencing and longer sentencing policies. It's a sad reflection on the power of fear and vested interests.

- 5 TRANSFORMATIVE JUSTICE PROCESSES.** These include much of what is recommended in restorative conferencing, but take into account wider background issues. It was also the process most favoured by Ruth Morris, founder of ICOPA. Transformative justice recognises that crime is far wider than usually imagined and that corporate and governmental crime is endemic across the world. For all that, it recognises 'street crime' as important and that the transformative conference creates an opportunity to address it and wider related issues. They might include inter-generational abuse, violence, addiction and poverty. They may look at resources available or otherwise in the community to help people, the opportunities for employment and constructive living, the need for the wider community to take social responsibility for its health and well-being. For example, if a town has only three bars and sports teams, no recreation centre and no employment opportunities, it is likely to have more alcohol related crime than if it did have these facilities. The transformative process can be a vehicle for community growth and development in ways that will bring out the best qualities in many in the community. The offending can be a trigger to convene such a gathering.

Conclusion

The nations of the world desperately need enlightenment and fresh direction in their dealings with crime and lawlessness. They desperately need a system that gives a better deal to victims, that promotes apology, healing, understanding, accountability, personal and collective responsibility, forgiveness, and reconciliation. We all need to re-learn how to practise compassion and mercy in our dealings with one another. We need a system that uses humane containment/imprisonment only as a final resort for

most dangerous offenders. Transformative and restorative processes provide opportunities for this to change to happen. The current criminal justice system doesn't. If we take such a message seriously there would be less prisons, the common good of all would be enhanced, money saved, better so justice delivered and safer communities built.

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