

Reflections on Restorative Justice in the Philippines

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THE JUSTICE system in the Philippines is contradictory. In some areas it is progressive and idealistic, in others outmoded and ineffective. Either way, problems with implementation are paramount; the theory of the laws often extends beyond their practical reach.

Whoever the commentator, the voice of the Filipino people on the justice system seems united. The problems commonly identified are implementation, corruption and miscarriage of justice often resulting in the victimization of the poor. Adults experiencing the justice system from all angles - whether victim, offender, policy maker, worker - are all calling for change. Anti-crime advocate and founder of Citizens Action Against Crime, Teresita Baltazar said in a recent article entitled 'Long wait for justice' that a crack-down on crime was needed; the criminal justice system "needs a major overhaul to make it work." Inmates in the Correctional Institution for Women (CIW) repeatedly say that whilst the justice system in theory is sound, the implementation as a result of bureaucracy is poor.

Despite their differing perspectives, these groups are joined by their common aims. Both aspire for a society in which there is less crime; fewer victims, fewer offenders and fewer miscarriages of justice; where freedom, security and stability are givens and rights

are not violated.

This poses the question of what the future holds for justice in the Philippines. The system at present recognizes crime as the violation of state laws. In the identification of and response to crime, it considers only the law broken rather than the individual affected.

One possible alternative system is that of Restorative Justice. A way of understanding Restorative Justice is by imagining the justice system in terms of a spectrum: placing



High school students' interpretation of restorative justice.

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retributive justice at one end, polarised by Restorative Justice at the other.

Restorative Justice aims to consider the position of all those affected by a crime – the victim, offender, their families and the community. It focuses on the harm caused by the crime with three stages. Firstly, it encourages the offenders to accept responsibility for what they have done; secondly, it tries to repair the harm done to the victim; and finally, it tries to reduce future harm by preventing crime. Prosecution only proceeds if the offender fails to make sufficient reparation. Throughout these stages, the rehabilitation of the offenders and their reintegration back into society is a primary concern.

This article considers some of the Restorative Justice practices at work in the Philippines and what individuals, at all levels of the system, say about the possibilities for others.

Within the Philippines two programs stand out as currently restorative in nature: the recently-enacted Juvenile Justice and Welfare Act of 2006 (Republic Act 9344) and the Barangay Justice System (*Katarungang Pambarangay*).

Throughout the world, Restorative Justice is increasing in popularity for juveniles. The UK and the US have joined many other countries in introducing practices that focus on the rehabilitation and reintegration of juveniles. The new Juvenile Justice Law reflects this trend, forging its path as a leader of alternative practices worldwide and providing an excellent model for other countries. The law raises the age of criminal responsibility, prevents the detention of minors and introduces programmes such as mediation, conflict resolution, reparation, anger management and counselling for offenders under 15 years. Underlying these changes is a theory of Restorative Justice. It presents a vision for a future where the emphasis is on the



rehabilitation of offenders rather than on their imprisonment.

However, the bill is ever contradicted by the practice of the current system. Ray Dean Salvosa, Executive Director of The Consuelo Foundation and a key campaigner for the bill remarks that it took them eight years to get the bill passed but that it will probably take the same again before it is properly implemented. Aside from this, the theory is at least there, and the groundwork for a campaign set. In a recent article 'Juvenile Justice' in *The Philippine Daily Inquirer*, Michael L. Tan welcomed the bill but asked, "What about the adults?"

Restorative Justice has a long tradition within indigenous communities. Practices such as peace pacts are still

fundamental to tribal relations today. The Barangay Justice System (BJS) represents a Restorative Justice practice for adults, which has emerged from indigenous practices (bottom-up) rather than from government initiatives (top-down). The BJS aims to address conflict in communities through mediation. It only comes into play when the maximum penalty for the crime committed is less than one year or the fine less than P5000. Although it has been successful in reducing court backlog (by up to one half in some areas) the BJS still faces problems. The limits of the crimes that it can consider, the possibilities for corruption, bias and a lack of understanding of how the system can work, often prevent the system from reaching its full potential.

To try and understand what other Restorative Justice practices could be introduced in the Philippines, we interviewed individuals at all levels of the justice system to get an idea of what restorative justice meant to them, what problems they perceived in the system at present and what changes they would make for the future. All of those interviewed had their own ideas about what restorative justice is but the common thread was the idea that Restorative Justice meant restoring something which had been lost.

In the Correctional Institution for Women this entails restoring to the women the opportunity to change, to have a second chance, by focusing on rehabilitation. However, Atty. Rachel Ruelo, Superintendent of



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CIW looks beyond her work, to the bigger picture. For Atty. Ruelo, justice is not an issue that becomes relevant only when an individual is faced with the law but is a principle that should be inherent in society. Justice and injustice both manifest in terms of the life opportunities offered or denied by society: "From the kind of house you live, the kind of food you eat, the kinds of clothes you wear, the places you go, how you are treated by local authorities, what kind of hospital you are admitted, to the kind of cemetery you are buried." To Atty. Ruelo, Restorative Justice is about giving back what has been denied; about recognising the impact of basic needs of all in society in order to "change the plight of the poor."

This philosophy is visible in

the value she places on the lives of the women in her institution, giving the offender the space to change, to try to repair what has gone wrong; to rehabilitate.

To Robert Arcinas Veneracion, Security Officer I at the CIW, his commitment to rehabilitation was also clear. 'We have no bad people, only misguided people', he said, concluding that 'everybody deserves a fresh start.'

As was suggested by one of the inmates, he sees CIW as a half-way house where inmates can be rehabilitated. However, he says that the stigma of the prison makes reintegration difficult. He suggests that a 'work program', where offenders are employed at minimum wage to improve the country's infrastructure, would enable inmates to return to their communities without the discrimination that comes from society's perception of them as criminals. He identifies that inmates must learn 'marketable skills' to prevent a relapse to the reasons why they committed the crime in the first place. He remarks that 'as part of

Restorative Justice will "always be a work in progress", evolving with a changing society

integration we must arm them. It is like going into battle'.

"To mend the brokenness of prison, the emptiness" is how one inmate at CIW defined Restorative Justice. The women inmates at CIW spoke with a deep reflection and insight about their understanding of Restorative Justice. Acknowledging the damage caused by their actions, they felt willing to repair what they could for the victim; and many had actively tried. They were willing to participate in a form of mediation facilitated by a third party, but felt sceptical that the victim would agree.

Whilst community reintegration is being increasingly incorporated into the working of the CIW, little contact has occurred between the victim and the offender. The link in this chain is left unrepaired. Why? The welfare of the inmates is the priority of the staff at CIW and they fear a meeting between such parties would put the inmates at risk.

And for the inmates themselves? Has their experience of justice been restorative? "Now I'm here I want to be a better person", to be able to feel that "even though I am here I am not an outcast in society". "Everybody deserves a second chance in life. If God can forgive why can't we?"

But what has been lost is the opportunity to parent their children, to serve society with their professional skills, to sustain family bonds, to earn money for their family. These things will have to be repaired when they are faced with release.

Consensus amongst CIW inmates was that five years in the correctional is enough for

punishment; after that the process becomes debilitating: 'anger sets in and you start to lose your sense of self' one inmate said. It was commonly agreed that despite the programs going on in the prison, more rehabilitation is needed. Several inmates called for proper livelihood programs where they could earn minimum wage, others called for proper counselling to provide social and psychological cleansing. It seemed that many women lacked emotional nurturing and one inmate suggested that the only place to find this within the prison was to turn to the church. Most of the women that we spoke to said that they understood each other better this way.

One inmate had a well thought out alternative to the prison system as it stands. Although she said that she was unaware of restorative justice, she advocated a 'community in which offenders can be properly rehabilitated; 'to make us a better person'. (Although this is exactly what CIW strives to be, it shows that the inmates feel that more is needed.) Despite the focus on rehabilitation, this inmate acknowledged that poverty was still a key cause of crime. She added that 'unless the economic crisis is taken care of decently and honestly the commission of crimes won't lessen.' This further suggests that although restorative justice practices are needed, this change must go hand in hand with programs to alleviate poverty as a significant cause of crime.

Furthermore, we were struck by the number of inmates who either professed their own innocence or who freely acknowledged that a fair percentage of inmates they knew were innocent. From this the question must be posed: what is the place for restorative justice in a system where those being rehabilitated may not need rehabilitation in the first place, and yet those who need rehabilitation are escaping the system? Again we arrive at the conclusion that the wider



Photo by TRACY P. PABICO

problems with the justice system - corruption, implementation and miscarriages of justice - must be dealt with as urgently as any restorative reform of the punitive system.

Resonating with Atty. Ruelo's statement that "the underprivileged are denied justice. The poor, the oppressed, the illiterate - most of them are denied justice", the head of the Public Attorney's Office, Atty. Persida Acosta, also stated that her priority now was to fight for the innocent ones. She appeals for the restoration of freedom for those who have been denied it. Those who are "there due to poverty, circumstances, and lack of good lawyers". Who else would be fighting for them?, she asks. Atty. Acosta identifies that there needs to be an equal voice between the prosecution and the defence; an equal voice between the law enforcers and the defence that protect human rights, and that there should be a balance between all opposing sectors.'

In Salvosa's eyes Restorative

Justice represents an ideal, but an ideal that society should nevertheless strive towards. Restorative Justice will "always be a work in progress", evolving with a changing society but what remains fundamental is the "balancing act" between providing and protecting the needs of the three agents to Restorative Justice: the victim, the offender and society. Salvosa stands at the interface between the sectors and his insight into the justice system has grown out of both professional and personal experience. In his role with the The Consuelo Foundation he has been at the forefront of developing Juvenile Restorative Justice system; working to understand the causes of crime, recognising the efficacy of rehabilitation programmes and gaining an empathy and understanding of the offender. Yet in his personal life he has struggled with the loss of his brother as a victim of crime and this pain has raised questions and conflicts. Salvosa acknowledges the existence of

the antagonism between the rational and the emotional, confessing "that's the contradiction in my life". Nonetheless, he affirms "I really believe in Restorative Justice".

The cycle of Restorative Justice considers the causes and consequences of crime. It aims to address the needs of all parties equally and emphasizes the value of all in society to participate in the restorative process. Restorative Justice is founded on the principle of balancing and representing the needs of the victim, the offender and society. To function effectively, Restorative Justice must therefore listen to the diversity of the voices and acknowledge the words spoken from experience.

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