

From England

RESTORATIVE JUSTICE IN THE PRISON SETTING

by **Andrew Coyle**

A Personal Context

For 24 years I worked as a prison governor in Scotland and in England. During those years I saw the best and the worst of human behaviour in respect of how men could treat each other. Let me briefly describe two of the prisons in which I worked. In Scotland in the late 1980's Peterhead Prison held those prisoners who had been assessed as the most disruptive and dangerous in the Scottish prison system. All of them had been involved in riots, in taking hostages or in escape attempts. When I went there as Governor in 1988 I walked into a world where the normal uniform for staff included a riot helmet, body armour and perspex shields; where prisoners were locked up in isolation for 23 hours each day and where some of them had covered themselves and their cells in their own excrement. The coercive nature of the prison was evident in the starkest possible terms. Clearly, this was a situation which was quite unacceptable in any decent prison system and had to be changed. With the help of the staff, of the prisoners themselves and of community agencies, that situation was changed. At that point the difficulties in Peterhead had become symbolic for the prison system in Scotland. Most prison systems have one prison with that sort of symbolism. It may be Kresty in St Petersburg, Russia, it may be Szeged in Hungary, it may be Kumla in Sweden, it may be Whitemoor in England. Somewhere there will be such a prison.

When I became Governor of Brixton Prison in London in 1991, I took on responsibility for almost 1200 prisoners and 600 staff. Brixton is the oldest prison in London. It was built in the early nineteenth century. When I took command of the prison I found that one large wing held 300 mentally disturbed prisoners, almost all of whom were awaiting trial, having been remanded to prison for psychiatric reports.

The atmosphere in that wing was of a modern Bedlam. No, it was of a medieval Bedlam, with continual shouting, keening, wailing and banging, with the all-pervading stench of stale food, urine and excrement. The prison was being used quite inappropriately for these men who should have been in the care of the health service. In some respects, the situation was even worse than that which I had encountered at Peterhead. Once again, the situation was intolerable and had to change. And, with a great deal of commitment and effort from many people, it did change. One of the main lessons of Brixton was that large numbers of men were being held in prison inappropriately, men who should have been dealt with in other settings, either in hospital or in community facilities.

If these were two examples of the worst, I also saw the best. I saw older prisoners quietly taking younger, volatile prisoners under their wing, so that they would not repeat the mistakes which they themselves had made years before when beginning their prison sentences. I saw prison officers exercising great professional care and understanding in their dealings with fractious mentally disturbed men. I saw prisoners who, when given the opportunity, were only too willing to help the old, the young, the infirm, people who were worse off than even they were¹.

All of these experiences left me with the question, “What is this thing we call the prison?” I found myself re-echoing the words which Vaclav Havel, now President of the Czech Republic, wrote to his wife, Olga, when he was a prisoner: “I never feel sorry for myself, as one might expect, but only for the other prisoners and altogether, for the fact that prisons must exist and that they are as they are, and that mankind has not so far invented a better way of coming to terms with certain things”².

The Reality of Imprisonment

These experiences left me with another question, “What is the future of the prison?” At the beginning of a new millennium we have the opportunity, as with so many other elements in our society, to ask why things are as they are, and whether there is perhaps another and better way of dealing with things. It is worth reminding ourselves at the outset that the prison is a relatively modern concept, having been with us in its present form for less than 300 years. To what extent is the traditional

model of imprisonment still relevant at the beginning of the 21st century? Is it possible that, like the public stocks or public execution or transportation in other ages, imprisonment is now a concept which has outlived any usefulness which it ever had? Has the time come for a radical re-think of the concept of imprisonment and the prison?

Allow me to present a few ideas about the reality of the prison today. The International Centre for Prison Studies has a number of practical prison reform projects in countries such as Kazakstan, India, Russia, Ukraine, Costa Rica and Brazil, all of them being carried out from a human rights perspective. The network of connections and information which the Centre has built up places it in a unique position to comment on imprisonment around the world.

So, what have we learned in the course of this work? In the first place, there has been a massive increase in the use of imprisonment in many countries in recent years, to an extent which would have been inconceivable even a few years ago. In the United States, for example, within a few short years there has been a 500 per cent increase in the number of people in prison. Recently the total prison population in the United States passed the 2 million mark, a figure equal to the population of many countries. Speaking about this number, the head of a conservative think tank in the United States commented, "It took more than 200 years for America to hold one million prisoners all at once. And yet we have managed to incarcerate the second million in only the past 10 years."³ The prison population in England and Wales has increased by 50 per cent in the last few years. In the Netherlands, long held up as a model of enlightenment in its criminal justice policies, there has been a fourfold increase in the rate of imprisonment in recent years. Paradoxically the best signals about reduction in the use of imprisonment have been coming recently from a number of countries in Eastern Europe, especially Russia, where there has been a real determination on the part of government and officials to reduce the terribly high levels of imprisonment. For the first time Russia has now fallen behind the United States in the proportion of people in prison.

In terms of attitudes to the place of imprisonment in civil society and its role in helping to create safer, more equal communities, the countries of the world fall into four broad categories. The first

category includes those countries which are beginning to question the central place which prison has traditionally held in many justice systems. In many of these countries imprisonment in its modern form was introduced by colonial powers. One is struck by the reality of this in many towns in Sub-Saharan Africa or South Asia when one comes across the local prison which is an obvious model of one of the 19th century prisons still to be found in London. In these countries the idea of taking large numbers of able-bodied young men, who should be contributing to the economic and social well-being of society, and locking them behind the high walls of a prison, where they are a burden on the community, makes little sense in terms of local cultural norms. In addition such countries cannot afford the economic consequences of such a policy. In many of these countries the problems facing their prison systems remain immense since some of the worst prison conditions are to be found in countries which were formerly ruled by imperial powers. However, because these countries have no indigenous concept of imprisonment there is a greater possibility that they will look for alternative methods of dealing with crime. In a number of these countries there is now a recognition that formal criminal justice systems have marginalised victims of crime and have failed to oblige offenders to face up to the damage and harm which their actions have caused. There is also a growing appreciation in some quarters that criminal justice processes have only a limited role to play in underpinning the values of a democratic society.

The second category includes those countries which are showing a willingness to tackle prison conditions which are sometimes appalling in terms of overcrowding and shortage of resources. For example, prison conditions and the treatment of prisoners in many countries in Central and Latin America have no place in any civilised society. Encouragingly, there are now indications from governments in a number of such countries of an acceptance that this situation cannot continue. Some of them are beginning to work with intergovernmental agencies and with non-governmental organisations in an attempt to bring their prison systems up to the standards required by international human rights instruments.

Most of the countries of the former Soviet Union are in a third category. They have some of the highest levels of imprisonment in the

world and some of the worst conditions. Kresty Prison in St Petersburg has a capacity for 3,000 prisoners and regularly holds 10,000, with 10 or 15 prisoners being held in small cells, 2 or 3 to a bed. Conditions are so bad that the Director of Kresty said recently that pre-trial prisoners frequently say to him, "Citizen Director, I am ready to plead guilty just to get out of this place." In many of these countries there is a recognition at the highest levels of government that these conditions are unacceptable and will have to be improved. The dilemma is how to do so in an environment of very limited public resources. A clear example of this determination to improve is the way in which the Russian and other governments in the region are co-operating on these matters with the Council of Europe. One of the main causes of this terrible situation is the high rate of imprisonment. A high proportion of prisoners are awaiting trial. This problem cannot be resolved within the prison system. In a number of these countries public prosecutors, who are responsible for committing accused persons to prison, are now examining ways to avoid such high levels of pre-trial detention. Several countries are also in the course of introducing new legislation to encourage judges to use sentences other than imprisonment.

The fourth category is the most problematic. It includes countries to which I have already referred, the United States and many in Western Europe, including the Netherlands and the United Kingdom where there is little indication of concern about the increasing number of people being sent to prison. In these countries politicians and commentators have tried to make a link between levels of imprisonment and levels of crime and have set out to convince the public and the media that a high level of imprisonment is an important tool in what is often described as the war against crime. According to this thesis, those who commit crime are a specific class of human being. If only they can be identified and taken out of society, so the argument goes, law abiding citizens will be able to go about their daily business in safety and security. The original notion of prison as a place of exclusion has been restored. For an increasing number of men and women the period of exclusion is becoming longer and longer. In the United States in particular a significant proportion of prisoners will spend the rest of their lives in prison. This brings with it unforeseen problems For example, a conference held in

New York a few years ago dealt with the issue of “Dying in Prison”. This recognised the fact that within a short period a number of prisons will have to be converted into hospices and homes for old prisoners.

The truth of the matter is that the evidence of any direct relation between higher rates of imprisonment and reduced crime levels is at best contradictory. Of course, it is possible if a high enough proportion of all people, particularly young men, is locked up that there will be a reduction in crime but that begs all sorts of questions about the value systems of a society which chooses to go down this path. Research evidence suggests that victims are not satisfied by this form of justice, that society has less public confidence in the criminal justice system and that those who have been in prison are likely to return to society with a greater sense of alienation and bitterness.

Vision for the Future

So, what should be our vision for the future? First of all, we have to decide what it is we expect of our criminal justice system and how it can best serve society. The most important point to make is that criminal justice processes have a relatively narrow part to play in underpinning the values of society. The formal justice process can support and reinforce the value system of a society, but it cannot be a substitute for it. Society should not look to the criminal justice process to resolve all its ills. We need to acknowledge the distinction between the punishment of criminals and the protection of the public on the one hand, and the prevention of crime on the other. The main purpose of the prison is to punish criminals by depriving them of their liberty. This should only be done in respect of the most serious crimes and when there is no reasonable alternative. Occasionally prison needs to be used to protect the community from individuals who are a threat to public safety. This is not a common occurrence and in most countries one can identify the small number of individuals who fall into this category by name. One should be very cautious of any suggestion that an increased use of imprisonment is an efficient form of crime control. There is little evidence from anywhere in the world that there is any relevance between high rates of imprisonment and low rates of crime. Indeed, the contrary is often the case. High rates of imprisonment are frequently an indicator of the break down of society's sense of community values.

We in Europe might have something to learn from initiatives which are being tested successfully in the developing world. Let me say a bit more about this. Prison is based on the notion of exclusion from society. In many countries this is not the traditional method of dealing with complex matters of human behaviour. A much better way is that of inclusion, of restoration, of reparation. That is not an easy way, it is a very difficult way. Nevertheless there are hopeful signs. A few years ago the International Centre for Prison Studies organised an international conference on penal reform. It was attended by 120 people from 52 countries around the world. At the end of five days' discussion the conference produced A New Agenda for Penal Reform.⁴ This agenda follows a logical sequence which starts from the premise that many issues which are currently dealt with in a criminal justice setting would be better resolved outside the criminal justice process. The next premise was that a greater number of offenders who are at present detained in custody, should be dealt with in the community. An immediate consequence of this would be a reduction in prison populations in most countries. In turn this would give prison administrators the opportunity to assist prisoners to use their time in prison positively and to prepare for release. The conference identified a number of strategies which would be central to the development of this new agenda. These included concepts such as restorative justice which recognises that formal criminal justice systems have marginalised victims of crime and have failed to oblige offenders to face up to the damage and harm which their actions have caused. The basic principle of restorative justice is a determination to restore the balance between the victim, the offender and the community. We should never forget that in many respects the victim is badly served by our current adversarial system of criminal justice.

If we come to understand that the prison is primarily a place of punishment rather than of personal reform and that it should be used only as a place of last resort to satisfy public demand for punishment of serious crime and in the interests of public safety, then we can move on to consider how, if it has to be used, the prison can be made a place of positive experience. Within the narrow context we have defined, it is possible to set a number of clear objectives. These are that people in prison should not be made worse by the experience of imprisonment, should be encouraged to face up to the crimes which

they have committed, should consider ways to repair the damage they have done and to provide satisfaction for the victims of crime, should be given opportunities to improve themselves, should be encouraged to prepare themselves for return to the community.

Prisons as we know them today are based on the notion of exclusion from society. Such a notion sits very uneasily with the concept of a society which is integrated and in which everyone is meant to contribute to the good of others. It is naive of us to assume that by excluding large numbers of people from our society behind the high walls of a prison for a specified period of time we will somehow turn them into better citizens. The successful experiments which are now emerging from other countries about restorative justice and community penalties give us real reason to hope that there may indeed be, in Vaclav Havel's words, "a better way of coming to terms with certain things." This alternative is not an easy way. It is a very difficult way. But eventually it will be a much more successful way.

Restorative Justice

The principles of what has become known as restorative justice are becoming well known. The following are generally regarded as the fundamental elements:

In restorative justice the emphasis of the process is the relationship between the perpetrator and the victim(s).⁵ This is in contrast to the focus of the retributive justice system in which the relationship is between the perpetrator and the State, with the State taking the place of the victim.

Restorative justice aims at satisfaction for the victim within a framework of reconciliation and forgiveness.⁶

Restorative justice also aims at bringing the offender to an understanding of the harm that has been caused, acceptance of the responsibility for those consequences and into a new relationship with the community.⁷

Restorative justice is normally seen as an alternative to retributive justice and as a different method of sentencing. However, there is also a growing consideration of the extent to which these principles can be applied to imprisonment itself.⁸

It has been suggested that “prisons can become more restorative by encouraging prisoners to take personal responsibility for the consequences of their behaviour, by providing greater opportunities to make amends, and by establishing formal channels of mediation between prisoners to resolve conflict”.⁹

With this in mind, the International Centre for Prison Studies has begun a project with a number of prisons in England to attempt to discover whether the principles of restorative justice, which are beginning to influence non-custodial sentences, can also be applied in a prison setting. We wanted to explore the idea of creating a ‘Restorative Prison’ by looking at the whole ethos of the individual prison. It has to be recognised that at one level there can be no such thing as a restorative prison. The concept of imprisonment, it can be argued, is destructive and the best that can be hoped for is that people will not be made worse by the experience of imprisonment. In practical terms, that is too negative a message and, in the interests of prisoners, of prison staff and of civil society one has to set one’s ambitions higher than that. We started from the position that such an enterprise should have at least four elements:

Creating more awareness amongst convicted prisoners of the impact of crime on victims and programmes of direct mediation between victims and offenders.

Creating a new direction for activities within prisons so that prisoners spend some of their time working for the benefit of others.

Remodelling the way disputes are settled within the prison and incorporating restorative principles into grievance and disciplinary procedures.

Building a new relationship with the community outside the prison to emphasise the need for prisoners to be reconciled with the wider society and received back into it.¹⁰

There are three pilot prisons directly involved in this project: a large local prison which has a wide cross-section of pre-trial and convicted prisoners, a minimum security prison which prepares prisoners for release and a young offenders’ prison, which holds men between the ages of 17 and 20.

The project is still in its early stages but already lessons are being learned. The prisons are working with a non-governmental organisation called the Inside Out Trust refurbishing goods, such as motor cycles, spectacles and books, for use by disadvantaged people in the United Kingdom and in other countries. As a direct result of the project the prisons involved have begun a major community work initiative. One prison intends to involve victims in its activities. In addition, the whole issue of finding alternative ways of resolving disputes, including breaches of discipline, is being considered.

Only one country so far has attempted to tackle restorative justice in the prison setting in a structured way. This is Belgium, where the Ministry of Justice has set out a clear programme for the introduction of restorative principles in its prisons. The ICPS project team, together with the governors of the three English prisons involved in our project, recently visited Belgium to see at first hand what this meant in practice. They were impressed by what is going on and are now building up links with their Belgian counterparts.

Recently there was a seminar to consider the extent to which victims might be involved with prisoners. One of the key speakers at this seminar was the mother of a young woman who recently was savagely murdered. This unusual woman decided that in order to come to terms with what had happened she wanted to meet the young man who had committed the murder to find out what had been in his mind. The prison authorities in England were very reluctant to agree to such a meeting but eventually did so. The woman has now published a remarkable account of her experiences.

The Entire Prison Experience

The application of restorative principles throughout the prison setting has the potential to change the whole daily way of working. It would begin from the first moment of reception into prison, when the prisoner is feeling most vulnerable and most open to influence. Building a restorative approach into induction procedures could have the added advantage of ensuring that short term prisoners, a group which often includes many younger prisoners, would not be excluded from a core aspect of the regime simply because they are in the institution for a short time. In many prisons at present such short term

prisoners are often excluded from many of the positive activities which go on in the prison.

At the heart of planning what a prisoner is to do in the course of his sentence and how he should prepare for release would be the concept of reconciliation with the community and making restitution to either the victims of their crime or the wider society. In the restorative prison these plans would affect decisions about the kind of work prisoners should be undertaking. Priority would be given to creating good interaction with local communities and meeting the needs of those communities.

Non-governmental organisations and other voluntary groups report that, when offered the chance, prisoners will work with enthusiasm on projects which they know will help people who are more disadvantaged than they are: the old, the ill, the poor. We should not overlook the fact that prisoners themselves can often feel discarded and worthless. The high motivation, active commitment and on-going enthusiasm that people in prison can bring to work of this kind and what they can achieve should not be underestimated. Such activities can help the prison system itself by providing a clear focus and purpose for what is done in prison workshops.

Prison education programmes could be specifically designed to relate to the kind of restorative work being undertaken by prisoners. Improving literacy and numeracy, increasing knowledge of communities and their needs, providing opportunities to consider relevant local and national current affairs all suggest themselves as topics which could have a clear link with work experience and its requirements and may have lasting value for the prisoner. Other opportunities might include learning about environmental issues, including conservation and recycling. Social skills teaching associated with the need of virtually all prisoners to rebuild relationships, to restore self-esteem and to resume citizenship outside the world of the prison could be based on each prisoner's involvement in restorative and reparative work during the sentence, whether that involved work on personal relationships or practical work to make redress.

Individual sentence plans and group work in prison could also focus on the concept of restoration and a prisoner's willingness to take

responsibility for actions and to be reconciled with other people - including victims - and with the wider community. Group work could provide opportunities for developing or taking personal responsibility, for raising victim awareness and for identifying ways to make reparation or to work at restoring the balance in relationships to which crime can do such damage. The reports on an individual prisoner's progress at various stages of a sentence could also offer a framework within which steps taken to make reparation, to restore relationships and to take personal responsibility for harmful acts could be taken into account.

Some activities which already take place within prisons can promote reparation to the community through work done for local charities, fund raising, sponsorships, and providing access to prison facilities, such as sports amenities. In the restorative prison there would be a fostering of the notion of the prison as part of the community rather than being isolated from it. This restorative focus would also provide the basis for recruitment of volunteers and visitors to help in the prison, making it clear that their role and activities would contribute to a relationship between the prison, the prisoners and the community with great potential value for all. Local organisations, churches and charitable groups would play a crucial part in the interaction between a prison and its surrounding community.

A comprehensive extension of the philosophy of restorative justice into the daily operation and management of a prison could also start to influence procedures for dealing with complaints and disciplinary procedures so that these too might become based on conflict resolution and the restoration of harmony, rather than on the apportionment of guilt, blame and punishment. Anti-violence strategies, the handling of issues of race and culture and all the internal tensions which are aspects of prison life might benefit from an approach based on reconciliation and the creation of greater opportunities for restoring the dignity, self-esteem and mutual respect of everyone involved.

Conclusion

A truly restorative regime in a prison would, on a daily basis, present prisoners with a series of duties, challenges and learning opportunities. It would invest trust in the prisoners' capacity to take

responsibility for performing tasks, for meeting challenges and for using learning opportunities. The task for prison staff at every level and in all departments would be to work with prisoners to identify the skills, guidance and support they need to restore their lives, equipping them for renewed citizenship and a life away from crime. Potentially a restorative regime would offer growth of mutual understanding, learning and co-operation between prisoners, prison staff and society, with rich opportunities to experience the value of working together and developing positive attitudes and behaviour of lasting influence. These principles are deeply embedded in all major religions. Chaplains are important signposts for these values in the prison setting. They have a central role to play in developing these simple yet complex messages throughout the whole prison environment.

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