

WHY LONG PRISON SENTENCES ARE FUTILE

by Robert Shaw

For a variety of reasons — a desire to make sentences proportionate with those for lesser offences or to deter others — it has been customary in certain jurisdictions and become customary in others to give lengthy sentences for certain offences. While not wishing to argue that this practice is pointless — people would not do it if they did not think there was a point to it, I would argue that it is futile for offenders, victims and society as a whole.

1 The offender perspective

1.1 Fitting the crime or fitting the person

Most serious offenders go through a process similar to that set out by David in Psalm 51 in the aftermath of his seduction of Bathsheba and murder of Uriah (2 Samuel 11 and 12: 1-15) (Table 1).

Table 1: Phases in Psalm 51

| Verses | Phase |
|---------|--|
| 1 - 2 | Denial of responsibility |
| 3 - 6 | Realisation; coming to terms with the enormity of what he has done |
| 7 - 11 | Asking someone else to sort the problem out |
| 12 - 15 | Bargaining |
| 16 - 17 | Acceptance of responsibility |

This process tends to take proportionately longer the more serious the offence but most serious offenders get far enough through it to be safely released within fourteen years, as demonstrated by the fact that, during the 1960s in England and Wales, when only those who had committed the most serious offences received a life sentence, male lifers were released on average eleven years after sentence and female lifers nine years.

Moreover, it is essentially the same process that affects all human beings who have been through a stressful situation and not going through it can

be a sign that there is something more seriously wrong with the offender which needs to be addressed to enable them to go through it. Plato argued in *Gorgias* 525A-B:

Now the proper office of all punishment is twofold: he who is rightly punished ought either to become better and profit by it or he ought to be made an example to his fellows ... Those who are improved when they are punished ... are those whose sins are curable ... But they who have been guilty of the worst crimes, and are incurable by reason of their crimes, are made examples; as they are incurable, they get no good themselves, but others get good when they behold them enduring ... the penalty of their sins ... (Peters, 1995, p. 5).

While not accepting Plato's argument that there is a deterrent effect in making an example of the 'incurable' because there is little evidence that deterrence affects anyone's behaviour, nonetheless his characterisation of offenders into those who are able to 'become better and profit by' punishment and those who appear not to be able to do so is as valid today as it may have been in Plato's day. My only caveat would be that at least some of those who may appear incurable are not; they have simply not received the appropriate 'cure'.

Unfortunately, rather than making the punishment fit the person, as Plato argued, we have made the punishment 'fit the crime' (Gilbert, 1885), a phrase surely intended to be ironic. So, even when someone has been 'cured,' they are required to remain in prison for the duration prescribed for the crime (Smidstra, 2008).

1.2 The necessity of metanoia

Serious offenders will often say that at the time of the offence they believed, whether because of some personal difficulty, the nature of their relationships or the circumstances which surrounded the offence, that there was no other way forward. In order to accept responsibility for an event, a person needs to believe that they could have made a different choice even if at the time of the event they believed it was the only way forward. This applies to 'good' and 'evil'. The person who does good because they believe it is the only way forward cannot claim responsibility for the good any more than the person who does evil for the same reason can accept responsibility for their evil action.

They may accept responsibility for the consequences of their action; the English common law duty of care requires all citizens to act reasonably in

the aftermath of an accident even if it was not their fault. If they fail to call an ambulance or leave people without helping them, even when the accident was not their fault, they are in breach of their common law duty. This is an important distinction; offenders can often see the consequences of their offending, for themselves, for their families and sometimes for their victims and their families as David did when the child born out of his adultery suffered an early death (2 Samuel 12:15-18). But that is quite different from accepting responsibility for their offending.

Metanoia, or ‘a change in the way the offender thinks about the situation’, is necessary because, until an offender has come to see that they could have acted differently in the situation, they see the victim as a victim of circumstances, not of their actions. *Metanoia* can be triggered in many different ways, including meeting victims, but, as there are several phases to the process of coming to terms with what one has done, introducing victims to serious offenders early on in the process risks disappointing victims or encouraging superficial *metanoia* in offenders.

Once an offender has reached the point at which they have accepted real responsibility for their actions, they can express remorse and offer an apology, not just for the consequences of their actions but for their actions. They can also accept forgiveness; forgiveness does not absolve them from their responsibility — it affirms it. The victim is saying to the offender, ‘I hold you responsible but I do not wish this to be held against you’. That, in essence, was what Stephen said (Acts 7:60). There is no point in forgiving someone who could not have made a different choice but, to accept Stephen’s forgiveness, those who stoned him would have to change the way they thought about what they had done as at least one witness to the stoning was to do.

It is perhaps worth pointing out that three years including time spent in Arabia elapsed between Saul’s conversion and his first visit to Jerusalem (Galatians 1:17-18). As an accomplice to the murder of Christians such as Stephen, Saul needed time to come to terms with what he had done, what that meant for him and how that had affected his view of what it means to be a Christian. In much the same way, it can take a serious offender some years to move from denial through to accepting their responsibility and on to working out the full implications that the change in the way they think about themselves has for themselves. But only in relatively few cases do all the processes need more than fourteen years to complete, the upper boundary for nearly all English male lifers in the 1960s.

Sentences of over fourteen years typically have three adverse effects on offenders:

- a sense of grievance at the length of sentence
- an unwillingness to engage in any process which might lead to a ‘change in the way they think about the world’
- lack of urgency on the part of the prison authorities in taking any action which might encourage this.

These have adverse effects for victims and society.

2 The victim perspective

Strang (2002) found that, among other things, victims of criminal offences want:

- to be treated respectfully and fairly, to be accorded dignity and respect and to have their views represented,
- material restoration and
- emotional restoration and an apology.

Marshall (2005) argues more generally that victims have seven needs, among them:

- answers to questions,
- genuine truth telling,
- repair and restitution and
- hope.

2.1 Emotional restoration and an apology

Many serious offenders are prepared to plead guilty, not because they accept real responsibility for their actions but because, even though they may believe themselves to be victims of circumstances, they do not deny that they carried out the offence. However, the greater the potential punishment and the more the offender believes they were a victim of circumstances, the greater the incentive not to plead guilty in the hope of securing a ‘not guilty’ verdict or a conviction on a lesser charge. In both these cases expressions of remorse are counterproductive for the offender because they will be taken as evidence of guilt. Similarly, any answers they give will be aimed at securing a ‘not guilty’ verdict in respect of the act they have committed. In such circumstances, there is no possibility of the victim receiving any emotional restoration or an apology.

Moreover, it will be job of the defence team to cast doubt on significant parts, if not all, of the victim's evidence; since victims are often routinely disbelieved before they even get to court (Dziech and Hawkins, 1998), the ordeal of having doubt cast on their evidence in the very place supposedly dedicated to discovering the truth can be extremely distressing without the additional burden that the terms in which they are allowed to tell the truth are significantly curtailed in a courtroom.

While increasing retribution may satisfy some victims, longer sentences

- do not deter most serious offenders,
- do not restore the victim's situation,
- rarely protect society since most serious offenders do not reoffend and
- are not needed to enable most offenders to accept responsibility for their actions — most can do this in well under ten years.

More victims would get answers to questions, truth telling, emotional restoration and an apology in due course if serious offenders were assured that:

- any punishment they received would reflect their attitude to their offending, that is, fit the person, rather than just the crime, and
- they would be supported in their journey to accepting responsibility, repentance and making an apology.

2.2 Restorative justice

Hitherto, few serious offenders have been offered restorative justice but Sherman and Strang (2007) found that it tended to be more successful with serious offenders; since they also found that most victims who had participated in restorative processes suffered fewer long term effects than those who had not, inhibiting offenders' willingness to admit their guilt and to participate in restorative justice takes away one way of alleviating the suffering of victims.

However, unlike less serious offenders who may pass through the processes of denial to realisation to acceptance of real responsibility in a relatively short time, most serious offenders will require an unpredictable number of years to do so and the speed with which they reach the point of accepting real responsibility will depend on a wide range of factors including the level of family support, support from fellow prisoners and support from prison staff.

Since most victims also need time to come to terms with the effects of a serious offence, the delay in offenders becoming ready to enter into restorative processes does not normally disadvantage victims. Victims need at least to have come to some realisation of the impact the offence has had on them before they can meaningfully engage in a restorative process which may involve sharing with the offender the reality of the impact the offence has had on them.

However, once both offender and victim have reached the point at which the one has accepted responsibility for the offence and the other has a clear understanding of the impact the offence has had on them, the restorative process can begin. The outcomes of this process are similar for both offender and victim — new relationships and hope. But if, for the offender, there are to be few new relationships because they are going to be incarcerated for another decade or more and no hope because, by the time they are released, there will be little opportunity to make and enjoy new relationships, the incentives for the offender to engage in a restorative process will be very few. A small number may be sufficiently motivated to do something for the benefit of the victim which gives them little benefit but those are precisely the people who should be making a contribution to society and not incarcerated.

Long prison sentences disadvantage victims in two ways:

- the threat of them discourages serious offenders from pleading guilty thereby increasing the stress of the trial for the victim and
- the reality of them discourages offenders from engaging in restorative processes because their restoration to society is delayed or prevented by the long sentence.

3 Society's perspective

Retributive theories of justice — fitting the punishment to the crime — have come to dominate much Western criminal justice, symbolised in England by the statue of justice holding a pair of scales.

3.1 Healing relationships

But societies are always based on relationships and most offences involve a breach of a relationship; the most important outcomes for a society are preventing further breaches whether arising directly from failing to heal the victim or indirectly from failing to address the circumstances in which such

breaches take place. It is very difficult to prevent most serious offences because most are crimes of, sometimes momentary, passion but it is possible in many cases to reduce the impacts of breaches on victims through restorative processes. These have long term benefits for society by:

- enabling offenders to learn how to heal breaches in relationships thereby enhancing their successful re-entry into society
- enabling victims to experience healing of the breach caused by the offence thereby reducing the likelihood that they will breach relationships because of the stress they are under from the impact of the offence
- reducing the costs of supporting both the offender in their rehabilitation and the victim in their healing.

3.2 Wider considerations

However, long sentences also cause breaches in other relationships — with parents, siblings, partner and children. Apart from the direct costs imposed on parents who continue to support their offspring, the indirect costs are often loss of support both directly because their child is in prison and indirectly because, when released, the exoffender does not have the resources to offer the support they would have done had they not been in prison for so long. Similar costs fall on siblings who support someone in prison.

Relatively few partners will continue to support someone on a long sentence and some of those on long sentences will actively encourage their partners to make a new relationship because they know they will never be able to offer what their partner needs. But the costs for children are possibly the most significant; apart from any stigma, the loss of support and the need for them to make new relationships to obtain what they would have gained from their absent parent may put them at a disadvantage throughout their lives.

Moreover, children who see their parents treated ‘unfairly’ are unlikely to have much respect for the system that treats them in that way. The adults who went through the 1930s depression continued to be positive about the ways in which they should manage their lives; but their children, seeing the ways in which their parents had been treated, did not learn their parents’ positive attitude to life but took a much more pessimistic view. The evidence from those countries that have adopted lengthier sentences is that they do not reduce levels of crime; is one reason that succeeding generations, seeing

the 'unfair' treatment of their own parents, lose respect for a criminal justice system that punishes people disproportionately?

In the end long sentences impose on society:

- direct costs in relation to the incarceration of offenders beyond the point at which they have accepted full responsibility for their actions, shown remorse and reached the point where they could offer an apology and make reparation to their victim(s)
- indirect costs in relation to support for victims who have not had the opportunity for an apology or any reparation from the offenders,
- indirect costs in relation to support for the offender's parents, family and children which would not have been incurred had the offender served a shorter sentence and
- intangible costs in relation to lack of respect for an 'unfair' criminal justice system.

4 A Christian perspective

Christianity has always been animated by the idea of becoming 'a new person' through *metanoia*, or 'a change in the way someone thinks about the world'. In relation to offending this has been described in many ways from David in Psalm 51 to Anne Perry in a conversation with Ian Rankin (2002). But from a Christian perspective on justice as *shalom* or peace with God and your neighbour (Marshall, 2001), *metanoia* involves not just thinking about yourself and others in a different way but putting that into action. James (2:14-20) argues that faith without words is empty and psychology tells us that people find it more difficult to learn things if they cannot put them into practice (Argyle, 1994) .

The peace of justice comes when both the offender has been able to repent and offer an emotional apology and the victim has been able to forgive and receive the apology; neither of these are easy in the case of serious offences. We need as Christians to seek to remove all the barriers which inhibit an offender from embarking on these processes and which inhibit the victim from receiving healing for the breach of the relationship. Neither victim nor offender can fully live out our Lord's commandment to love their neighbour as themselves until they have reached forgiveness and repentance respectively and found the *shalom* of justice; until then, they and those around them are vulnerable to the continuing effects of the relationship breach that was the offence.

5 Pointlessness and futility

I said at the outset that things can be futile but not pointless. Politicians, particularly in the US and the UK, have recognised that advocating lengthier sentences gives them political credibility. It also emphasises for the ordinary citizen that they are ‘different’ from the offender much as the Pharisee believed that he was ‘different’ from the tax collector (Luke 18: 9-14). This may all be terribly reassuring — terribly because it is simply not true. The vast majority of offenders, even serious offenders, are ordinary people with ordinary feelings who found themselves in a situation they could not handle.

The processes that they go through to come to terms with what they have done are the same processes which those who have not committed offences go through to deal with other stressful situations. The point of pretending that they are not is to convince us, like the Pharisee, that they are in some way not part of humanity and therefore, like Plato’s ‘incurables’, it does not matter how badly we as a society treat them.

But the price of accepting this point is that we condemn victims to a futile search for emotional restoration and an apology, offenders to futile hours in prison when they could be contributing to society outside prison and society to the futility of building more and more institutions to deal with a problem which society, not the offender, has created.

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