

The Duality of Responsibility

and the end of prison as we know it

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The Problem - 1

Prisons fail:

- To prevent future offending/recidivism
- To protect and preserve human dignity
- To use taxpayers' money effectively
- To address the causes of crime
- To deal with the consequences of crime
- To acknowledge the complexities of victimisation and criminalisation, and the offender/victim nexus
- To facilitate autonomy and self-determination

The Problem - 2

Offenders are victims too:

- Indigenous people and colonialism equals marginalisation, dispossession and criminalisation
- Young women (and men) suffer abuse at the hands of another, then are brutalised by uncaring and unforgiving systems of justice
- Many who suffer from co-morbidity end up enduring the harsh realities of punishment systems, but not dealing with their mental illness or substance abuse

Responsibility

Both society and the offender benefit from sharing social and moral responsibility for offending.

Duality of Responsibility

On the one hand:

Offender rehabilitation is a societal imperative, to help balance the social disadvantages and personal injuries suffered by many offenders.

Society will benefit by giving something to the offender in order for them to go beyond offending.

Duality of Responsibility

On the other hand:

A vital part of responsibility is to acknowledge the doing of harm, and that you have actually hurt somebody.

Taking responsibility requires the individual offender to have an interest in making things right, in repairing the harm, in addressing the wrongs.

The offender has to give something to society, to someone else, for the sake of doing the right thing.

Four Propositions about Justice

The philosophy of justice is the driver of justice as a form of practice.

Proposition 1: Justice ought to be an active process

- Emphasis on participation – of victims, of offenders, of advocates, of communities
- Emphasis on doing something – repairing harm, addressing the wrong
- Emphasis on addressing issues – collaborative problem-solving

Proposition 2:

Justice is about maximising liberty

- Emphasis on maximising liberties, choices and autonomy – of victim, of offender, of community
- Emphasis on maximising status, capacities and self-worth– by enhancing control over one’s own destiny and bolstering one’s standing in the world
- Emphasis on self-determination – making decisions about one’s own future and one’s own life and one’s own community

Proposition 3: Justice deals with the whole person

- Emphasis on the human rights and dignity of the person – of victims, of offenders
- Emphasis on each person as having capacity to do good – it is acts that are socially condemned, not people
- Emphasis on acknowledging the distorting effects of harmful acts on ordinary people – histories of abuse may engender futures of offending

Proposition 4: Justice has temporal & spatial dimensions

- Emphasis on the past, present and future lives of individuals – learn from what has gone on, and recognise that what we do now has consequences
- Emphasis on potentials and what might be, rather than a fixed state – forward looking and possibilities, with new knowledge and skills opening up new pathways and alternative horizons
- Emphasis on the local – what we do in our own backyard (family, neighbourhood, workplace, community) counts and is particularly meaningful

Doing Justice

Philosophy of justice has to be translated into active participation if it is to be meaningful.

Key Concepts 1: Forgiving-Giving

Strategic use of forgiveness is essential in motivating people to make things right, and to instigate changes in their own life – forgiveness on the condition that they take action in some way, by repairing harm and by engaging in programmes and services that will enhance their personal development and wellbeing.

Giving is one of the most meaningful acts for humans, and makes us feel good about ourselves and to value the world and others generally – we can repair the damage in ways that make sense and generate pride.

Key Concepts 2: Redemption-Good Life

Redemption can be seen as a journey toward self-knowledge and personal fulfilment through better choices. It offers hope – now and into the future.

Creating a good life is intensely personal, and has elements commonly shared with the rest of humanity. Achieving this is shaped by the economic and social resources available to us as well as what happens within us.

Key concepts 3:

What works – problem-solving

To address the failures of the prison and the inadequacies of justice, the focus has to be on ‘what works’ in addressing social and moral issues, and in working with people to achieve better lives.

Justice is always intertwined with social, economic and cultural issues – a collaborative problem-solving approach is needed if the best outcomes are to be forthcoming.

Key concepts 4: Social respect – Self respect

Social respect is achieved through the combination of acknowledging harm, and giving something to the community, to each other, and to one's self. It is a status conferred upon us notionally, as in the case of human rights, or proactively, as in the case of doing something deserving of beneficial attention.

Self respect is about being able to achieve a sense of one's self as being a good person. For all of us, this means dealing with the harms we have received and that we have perpetrated, in ways that allow us to nevertheless continue into the future in a positive way.

Institutionalising Justice

Putting a redemptive philosophy into action also means establishing institutions that embody the values and principles of that philosophy.

Therapeutic Justice

- Courts as case managers:
 - primary function of the court is to work collaboratively with partner agencies in case management and programme delivery for each offendere.g., drug courts, mental impairment courts
- Courts as diversionary operators and case monitors
 - a review process provides information for consideration in sentencinge.g., drug court diversion programmes, family violence courts
- Courts as specialist adjudicators
 - concerned with appropriate sentencinge.g., Indigenous courts, family violence intervention programmes.

Restorative Justice

- *Victim-Offender Mediation and Dialogue* – in which victim restoration is highly important, along with active victim involvement, protection of the victim and meeting of victim needs.
- *Family Group Conferencing* – in which affected community members are encouraged to participate (including and especially the friends and family of the victims and offenders).
- *Circle Sentencing or Peacemaking Circles* – in which citizen involvement and sharing of power, and community empowerment is highly regarded.
- *Reparative Probation* – in which the main concern is with victim restoration and community empowerment through offenders undertaking tasks that directly benefit victims and communities.
- *Balanced Restorative* – in which victims are afforded services and opportunities for involvement and input, offenders are given the opportunity to increase their skills and capacities, and connections can be forged between different community members.

Prison as Empowering

- Emphasis on prison as last resort circuit-breaker, an opportunity for positive intervention arising out of the crisis of arrest
- Focus on self-empowerment and self-determination, and capacities for positive change.
- Development of spaces in which to give and forgive, grow and choose to desist from offensive lives – such as prison education mentor schemes, volunteer work brigades, social skills workshops, drug rehabilitation programmes, life narratives, arts and music
- Intensive engagement with supportive staff, informed by rehabilitation ethos and promotion of good life aims, who deal with whole persons.

Making It Work: Go Local

Repairing harm can and should involve communities – a range of restorative justice measures involving community-based agencies

Problem-solving starts at ‘home’ and in one’s relationships and communities – therapeutic justice and specialist courts

Victim and community frustration and insecurity is an outcome of distant processes and lack of direct engagement in justice – community justice panels

Abolish This Type of Prison

Imprisonment without the capacity for giving and forgiving (both to and by individual offenders within the prison) substantively fails to address and, indeed, actively impedes the development of social and personal responsibility in relation to offending, and working towards a life free from offending.

Implications for Justice

- Adjudication based on active notions of justice – problem-solving courts, community justice panels
- More community based interventions involving individually tailored responses, including giving and forgiving strategies
- Progressive justice system – one based on small steps, achievable goals, offering capacity for social recognition, in a suitable time frame

Implications for Prisons

- No short prison sentences – so that there is no churning through of short-term prisoners, and greater opportunity to work intensively and extensively with those who do end up in prison
- Prisons as last resort for rehabilitation, which means fewer people but more programmes and services
- Prisons as last resort incapacitation – humane containment of those few who pose serious threats to community safety

Both Ways Responsibility

- Justice is an active social process that demands commitment from everyone.
- Key focus is on building capacity for victims, offenders, families and communities – to participate, to make decisions, to be well, and to define a good life for themselves and their loved ones.