

TRUTH, JUSTICE, PEACE: THE FOUNDATIONS OF RESTORATIVE JUSTICE

CHARLES W. COLSON*

I. INTRODUCTION

As an aide to President Richard Nixon, I wrote some of his most strident “law and order” speeches. The fabric of society seemed to be unraveling in the turbulence of the late ’60s. The commitment of individuals to traditional American values and institutions was weakening. On some days, the White House itself seemed to be under siege—literally—by the tens and hundreds of thousands of protesters who came to Washington from time to time. Our response was to call for order. Laws must be obeyed; order must be maintained.

There were, of course, political advantages to calling for law and order. We knew it would appeal to the “Silent Majority” of working Americans who were disturbed and angered by what seemed to be open rebellion by youngsters. Furthermore, it changed the focus of the debate from a distant war that many did not understand to a domestic crisis that confronted everyone. There were certainly tactical advantages of posing law and order as the question for political debate: what candidate, after all, could win support by arguing *against* law and order.

But the call for law and order was not simply political strategy. Citizens either must restrain themselves by an internal sense of duty or they must be restrained externally by a sense of fear. For as Lord Acton argued 100 years ago, “[I]f men are not kept straight by duty, they must be by fear. The more they are kept by fear, the less they are free. The greater the strength of duty, the greater the liberty.”¹ As

* B.A., Brown University; J.D. (with honors), George Washington University National Law Center. Founder and Chairman of the Board of Prison Fellowship Ministries, based in Washington, D.C.

1. 3 JOHN EMERICK EDWARD DALBERG-ACTON, *Essays in Religion, Politics, and Morality*, in SELECTED WRITINGS OF LORD ACTON 650 (J. Rufus Fears ed., Liberty Classics 1988).

increasing numbers of Americans rejected the duty to restrain themselves, imposed order became an appropriate response.

One of the ironies of that era is that some in the White House were casting off internal restraints themselves in response to the crisis. In the name of order we broke the law, and some of us paid for that in the courts and prisons of the land we had once helped govern.

The call for law and order did not end with the Nixon Presidency. It continues to be raised in every election and legislature during debates over crime and criminal justice. Its popular appeal is demonstrated each time the public accepts restrictions on personal liberty that would previously have been unthinkable. Curfews on young people have been imposed by some cities over the objection that they are basically a form of martial law. In fact, they are, but they have almost uniform approval from frightened citizens.

A major newspaper found that 7 out of 10 people favored police roadblocks and random automobile searches to stop drugs.² As one inner-city resident told reporters, people "shell-shocked" by crime welcome higher levels of police presence and intrusion even when they appear to violate the Fourth Amendment's protection against unreasonable searches and seizures.³

A public afraid of crime is susceptible to tyranny. The loss of freedom becomes a small price to pay for safety. Unfortunately, that choice masks other losses which have brought us to that point. For freedom is but the last of a series of virtues we will have lost: truth, justice, peace and freedom. That is a high price for safety, and an unnecessary one as we will see.

II. TRUTH

Our political leaders present a frightened citizenry with this choice: liberty or order. Given that dilemma, order always wins. Confronted by fear of social chaos, people will always exchange liberty for order, even if it is enforced through the barrel of a gun. But

2. Ana Menemdoz and April Witt, *Most Are Ready to Pay to Get Tough on Crime*, MIAMI HERALD, Nov. 1, 1993, at D1.

3. *Id.*

this is a false choice. For the real problem is not that we have lost order, but that we have lost truth. A commitment to moral truth is the most powerful restraint on immoral behavior. When that commitment is lost—when we no longer believe in objective truth—we reap weakened informal social controls and unleashed criminal impulses. As Dostoyevsky noted: If there is no God, everything is permissible.⁴ Crime becomes inevitable.

Crime in the streets, but also crime in the suites. The internal restraint of moral duty predicated on objective truth must guide the pedestrian as well as the President, the common citizen as well as the corporation, the salesman as well as the soldier. If as a society we no longer agree that there is indeed objective truth, nobility, righteousness, purity, loveliness and excellence, instead using those terms merely to indicate personal preferences, then we are in danger of welcoming tyranny in the name of order. Furthermore, any attempt to impose order can be rejected as mere tyranny. If you question that statement, just look at Bosnia.

Dusan Tadic had the dubious distinction of being the first person tried for war crimes since the end of World War II. He was alleged to have committed murder, rape and torture of Bosnian Muslims as part of a campaign of ethnic cleansing. He and others were charged with “crimes against humanity,” a category of offense developed during the Nuremberg trials a generation ago. The legal and moral premise that permits such prosecution is that a standard of decency exists which is legally binding on all nations, irrespective of culture, creed, or history. By charging anyone with “crimes against humanity,” nations implicitly reject notions of moral and cultural relativism, and declare a universal moral standard that transcends political boundaries and supercedes national sovereignty.

It is right to be outraged by the barbarism in Bosnia. But on what basis today, 50 years after Nuremberg, do we denounce such behavior? What right does the international community have to sit in judgment on Tadic or anyone else? In the words of the late Arthur Leff of Yale Law School, all claims to authority are vulnerable to “the grand

4. FYODOR DOSTOEVSKY, *THE BROTHERS KARAMAZOV* 69, 315, 632 (Richard Pevear and Larissa Volokhonsky trans., Everyman's Library 1992) (1879).

‘sez who?’”⁵ Genocide is wrong, we say. To which Tadic and his ilk respond, “Sez who?” Massacring civilians is wrong, we say. “Sez who?” If it’s merely my opinion versus your opinion, exalted claims to international justice are really nothing more than a power play.

We are horrified by the bloodbath in Bosnia, Rwanda and other parts of the world. But to condemn these things, we must appeal to an objective moral standard, a standard that judges our own lives as well those of others. We must acknowledge that our own moral failings are as much a violation of a transcendent order as the barbarism we abhor—that our guilt is as real as Tadic’s even if our offenses have been more socially acceptable.

We must affirm objective truth in order to condemn genocide. We must embrace moral truth to build a social consensus on right and wrong. Yet that truth convicts and condemns us all. No wonder we prefer to give each other permission to “do your own thing.”

III. JUSTICE

I believe that the solution may come from a deeper understanding of the very meaning of *justice* itself. This term is widely misunderstood in our society. Liberals use it to mean social justice; that is, lift everyone up to the same level. Conservatives define it as making sure everyone gets his due; specifically, guilty people get punished. These two totally different definitions of justice both grossly undervalue the term.

The Scriptures of the Old and New Testaments give a much more complete understanding of *justice*. When the prophets called for justice to “roll down like waters”⁶ and admonished the people to “do justice,”⁷ they used a particular Hebrew word: *tsedeqah*. This word came from a root meaning “straight” in the physical sense, and it came to mean something that conformed to its standard. Just weights are those that are correct. Paths of righteousness are smooth paths that take us where we want to go. Something that meets its standard,

5. Arthur Leff, *Unspeakable Ethics, Unnatural Law*, 1979 DUKE L.J. 1229 (1979).

6. *Amos* 5:24 (New American Standard).

7. *Micah* 6:8 (New American Standard).

then, is just or righteous. As *tsedeqah* became a legal term, it came to mean the abstract standard of behavior which should govern humans in their relationships with each other, with nature, and with God.

The New Testament affirms the same standard, but teaches that it was embodied in a person, Jesus Christ.⁸ The apostle Paul writes that through Christ's atoning death on the cross, humanity may be *justified*—declared and made righteous—by faith in Christ.⁹ Paul's audacious claim is that Christ's death not only paid the price for humanity's failure to meet the standard, but that in His resurrection we were given the power to become righteous—to measure up to the standard.

This may seem like an abstract point of theology, but it had enormous consequences on the social, economic and political history of the world. For it was precisely this theological affirmation that ushered in the Protestant Reformation. As a sixteenth-century monk, Martin Luther struggled with his fears of God's justice. He confessed that he "felt that before God I was a sinner with an extremely troubled conscience. I couldn't be sure that God was appeased by my satisfaction. I did not love, no, rather I hated the just God who punishes sinners."¹⁰

In pondering Paul's letter to the Romans, he experienced a moment of insight when he realized that

the justice of God is that by which the just person lives by a gift of God, that is by faith. I began to understand that this verse means that the justice of God is revealed through the Gospel, but it is a passive justice, i.e., that by which the merciful God justifies us by faith, as it is written: "The just person lives by faith." All at once I felt that I had been born again and entered into paradise itself through open gates.

8. *Hebrews* 1:1-2.

9. *Romans* 3:28.

10. MARTIN LUTHER, PREFACE TO THE COMPLETE EDITION OF LUTHER'S LATIN WORKS (Andrew Thornton trans., 1983). Available on the World Wide Web at <http://www.iclnet.org/pub/resources/text/wittenberg/luther/preflat-eng.txt>.

Immediately I saw the whole of Scriptures in a different light.¹¹

Lord Acton's either/or proposition—internal restraint or external order—is answered by the biblical understanding of justice: it has both an internal and an external function. Its internal purpose is to justify—to make just—and in so doing the standard becomes internalized, supplying Lord Acton's internal restraint. Its external purpose is to mold the institutions of society to that same standard. Justice leads to an order which is itself just and which is accomplished through just means.

IV. PEACE

What relevance does this have for a society which is increasingly secularized? Isn't this all simply abstract theology of interest only to some Christians? Before I explain why I believe it is highly practical in fashioning a response to crime, let us look at one more Hebrew term which, like justice, had a much richer meaning than our contemporary usage. The word is *shalom*, peace.

We are used to thinking about peace as the absence of conflict—as in a “peace treaty” which ends overt hostilities. *Shalom*, on the other hand, has a far more profound meaning. It means the presence of right relationships between people, relationships which are harmonious, whole, wholesome and complete. It is a term which describes the ideal state of relationship between individuals, communities, nature and God:

The wolf will live with the lamb, the leopard will lie down with the goat, the calf and the lion and the yearling together; and a little child will lead them. The cow will feed with the bear, their young will lie down together, and the lion will eat straw like the ox. The infant will play near the hole of the cobra, and the young child put his hand into the viper's nest.¹²

11. *Id.*

12. *Isaiah* 11:6-8 (New International).

This is not a zoo where iron bars keep predators from destroying their prey. The little child is not a visitor to this zoo, watching from the safe side of a fence. A zoo represents order; Isaiah's prophecy is an image of peace. Predator and prey are at peace, their former hostility replaced by new natures. Lions have become vegetarians! This image is so far from the realm of contemporary experience that it is easy to discount it as an eschatological vision with little relevance to us today: Peace would be wonderful, but it is not possible in this world, we demur. Order is our best hope.

Starry-eyed idealism is inadequate in the face of genocide, violent crime, and even public order offenses. But the law and judges of the Old Testament era were not visionaries or optimists. They were remarkably practical. They understood that crime destroyed *shalom*, replacing harmony that previously existed with fear, hostility, anger and broken relationships. The appropriate response, then, was to work to repair relationships, to rebuild *shalom*. This process had two steps. The first was to vindicate the rights of the victim and the authority of the law through some form of recompense. The Hebrew word for this form of punishment was *shillem*, which comes from the same root as *shalom*. Recompense was not revenge or vengeance; those words came from different roots. Requiring the offender to make recompense vindicated the law and reasserted the authority of the community norms; in so doing, it helped restore *shalom*.

The second part of the Hebrew response to crime was to require offenders to pay back their victims. Restitution, then, was the basic unit of punishment in the Old Testament, much as imprisonment is for us today. It was used in cases of property and violent crime¹³ and the amount of the restitution ranged from 100 percent to 500 percent. Restitution, it should be noted, is not a fine: a fine is paid to the government, restitution is paid to the victim. It is a form of compensation for the damage done to the injured parties even as it serves to vindicate the authority of the law. Like recompense, the Hebrew word for restitution was also related to *shalom*. Every time *shillum* was ordered, it reminded the community that a prerequisite for community peace was a restored victim.

13. See generally *Exodus 22*.

Crime broke *shalom*, and it violated the standard of human conduct incorporated by the term *tsedeqah*. The work of justice—making things right again—required that the standard of justice be vindicated through some form of recompense by the offender, and that the harm done be repaired by the offender. Both could be accomplished through the use of restitution. Restitution is one of the hallmarks of restorative justice. When restitution is determined by using restorative processes such as victim offender reconciliation or family group conferences, the victim has an opportunity to confront the offender and to ask questions that only the offender may be able to answer, and the offender is more likely to make full restitution.¹⁴ A restorative response to crime helps rebuild community peace.

V. RESTORATIVE JUSTICE

Restorative justice is an approach to crime and justice first proposed in the 1980s. A fundamental tenet of restorative justice is that the needs and responsibilities of all the persons affected by crime must be addressed in the response to crime. A restorative approach to crime brings the offender and victim together to identify the wrong done by the offender, to help both express and understand the effects of the crime, and to agree on an accountability plan for the offender to make things right.

Restorative procedures make sense intuitively, but they are far different from typical criminal justice procedures. The offender apologizes to the victim instead of adopting a technical posture of “not guilty.” The offender makes restitution to the victim instead of passively accepting imposed punishment. The victim can ask questions and gain information needed for healing rather than simply appearing as one of a series of witnesses in the criminal court hearing.

Prison Fellowship promotes restorative justice as a contemporary expression of biblical principles of justice. You may remember the story of Zacchaeus¹⁵, the white-collar criminal who climbed a

14. DANIEL VAN NESS AND KAREN HEETDERKS STRONG, RESTORING JUSTICE 69-74 (1997).

15. *Luke* 9: 1-10.

sycamore tree to see Jesus. The crowd disliked him; many of the people gathered that day may have been his victims. When Jesus stopped to talk to him the crowd muttered to themselves about Jesus' shocking behavior. Then, to their surprise and Jesus' delight, Zacchaeus agreed to pay back even more than he had stolen—four times as much—and to give half his remaining wealth to the poor. Jesus took advantage of Zacchaeus' surprise announcement by reminding them that Zacchaeus was a fellow child of Abraham. Zacchaeus was part of their community.

With his admission of wrongdoing, he had affirmed the moral truth of the injunction not to steal, and he had admitted the truth of the allegations against him. By accepting the duty to pay restitution, he vindicated the authority of the law and he ensured that victims received compensation for their injuries. At that point, he had made peace with the community, and he could be accepted back as a member in good standing. Then he went to a celebration dinner with Jesus.

Imagine how this case would be handled today. "Zacchaeus" would be charged with federal offenses and be advised by his lawyer to enter a plea of not guilty. There would be litigation over whether the "priest-penitent privilege" applied to Jesus' and Zacchaeus' conversation. If not, then Jesus would be subpoenaed to testify. After his conviction, Zacchaeus would be sentenced to a lengthy prison sentence to "send a message" to other public servants. The victims would not be reimbursed, Zacchaeus would never apologize, he would be removed from the community and returned years later as a stigmatized ex-offender, and probably politicians would propose tougher sentences for corrupt public officials.

Jesus' response was so much better. Justice was done. Truth was acknowledged. Peace was established.

A fearful public has alternatives to strong-armed intervention by the government to suppress disorder. There are choices in addition to that of liberty or order. In the face of crime we can choose to restore the victims and to restore peace.

We can work to restore justice.