

Alternatives to International Criminal Justice - Restorative Justice and Peace Through Peaceful Means -

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*“Out of timber so crooked as that from which man is made nothing entirely straight can be carved.”
-Immanuel Kant-*

Individuals live their own lives, and have their own goals. An entity may be an individual, a group, or a nation. The purposes of two parties may be in harmony with each other and without conflict, or may not. Such purposes may be good, or evil. Essentially, problems occur when the purposes of two or more parties do not coincide. The basic position of the traditional criminal justice system is to address problems simply by punishing the perpetrators. However, over the last several decades, there have been new studies in the area of peace and human rights, and in this environment, new institutions may be welcome. This is inspiring changes from the perspective of human integrity and the right to peace, which pursues harmonious coexistence.

If the criminal justice system, which aims to punish perpetrators, takes an interest in the perpetrators as well as the victims by enabling the perpetrators to truly repent for their offenses and voluntarily make restitution to their victims, while allowing the victims to accept the restitution based on a principle of forgiveness and tolerance, a foundation for peace and respect of others in the community will be formed. As such, it is very significant to prepare for a system wherein the perpetrator and the victim can remediate their hurt, and recover. If we are working from a principle that values life above all, and values human rights to the extent that they carry more weight than the earth itself, such an approach must be inspiring. It is not that easy to build a society that is better and more peaceful, in which everyone can live together harmoniously. When criminals are punished, this does not mean that everything has been resolved. Often, the root causes of a crime can be found in the community, or even in the victim himself or herself. On this basis, victims and communities also have a responsibility to take an interest in the perpetrators of crimes. The intent must be to identify the fundamental causes of crimes, and by addressing these causes, to create a better society and a better country, by seeking an alternative to the international criminal justice system based on peaceful means.

To achieve this, one or more of the following three approaches may be effective. The first is to constitute a truth commission to pursue truth and reconciliation. This approach has been successful in South Africa, as well as in some Latin American and Asian countries. Truth will be identified, and reconciliation will be made based on investigations into violations of human rights and provisions concerning ethical and legal responsibilities and duties. The Report of the Truth and Reconciliation

Commission that was prepared by the government of South Africa in 2003 also addressed this issue. Through the Truth and Reconciliation Commission, violations of human rights relating to apartheid have been addressed.[i] The second is to hold public inquiries. This is closely related to post-conflict management. “Bloody Sunday[iii]” in the UK is a representative sample. In this event, 13 people were shot to death and several were injured on January 30, 1972, a Sunday. A high-profile public inquiry, it was led by English Supreme Court Justice Mark Saville together with a judge from New Zealand and a judge from Canada, and was established on April 3, 1998. The last is “Community-based Restorative Justice”, which is the most important and is addressed intensively herein. This is a mechanism that focuses on the post-conflict environment, and is deeply related to the peaceful coexistence of a community. In this area, new justice systems have emerged, called “gacaca” and restorative justice.[iii] Gacaca is a new court system that was launched by the Rwandese government on June 18, 2002. This new court system follows the customary system for community hearings, which have been used whenever a conflict occurs in the community. Begun at a Canadian church in the 1970s, restorative justice is a crime-fighting approach for victim-sensitive victim-offender mediation.

Criminal prosecution is not always the right solution. It is a good method only when it can benefit society and nation. If we acknowledge that unexpected pitfalls exist for everyone, then people should be given one more chance, even if they have committed a crime. The proposition of the “restoration of offenders” is not suitable for all conflicts. Nonetheless, it is a new approach to consensus, and aims at facilitating mutual understanding. The Bible features an approach similar to this restorative justice.[iv] It also refers to accountability for healing that goes through discipline to move toward a peaceful environment, which is different from the existing criminal justice system.[v] The Bible considers every individual a sinner. It says that an individual can receive forgiveness when he/she sincerely repents, surrenders to God, and produces the fruit of repentance.[vi] It further says that reconciliation will take place when one makes restitution and reparation for the harm, and this action bears fruit.[vii] When this is done, the offender is able to commit himself/herself to the community and the nation by producing the fruit of the Spirit[viii], through his/her indebtedness and freedom from being forgiven. Curing offenders, allowing them to repent for their wrongdoings and to voluntarily make restitution and reparation, a win-win situation for perpetrator and victim, is possible in the love of God through the remediation of hurt, restoration, forgiveness, and tolerance. Through this, the community can seek peace through social justice and tolerance. Both perpetrators and victims have fundamental rights as human beings. In this area, the roles of national reconciliation/mediation agencies, protection agencies, and NGOs are important.

These approaches may equally be applied to international criminal justice. As demonstrated above, post-conflict management should be approached peacefully. Disputes occur when the purposes of parties do not coincide with each other. This discord emerges in the form of conflict. A conflict is a polarization of opinions or powers. Ultimately, such polarization may reach the level of violence, which leaves residual trauma. This process repeats itself, continuously. The ring of this vicious circle should be peacefully severed. Such an approach to peaceful means advocates solving problems through mediation (this is directed toward the future, and it is better than “victory”) at the stage of conflict; through the positive involvement of peace-building at the stage of polarization; and through nonviolence rather than violence, and reconciliation and conciliation (which is against the past, and requires healing) instead of trauma.

[i]Mark Freeman, *Truth Commissions and Procedural Fairness*, Part 1: ‘Introduction’ 3 (Cambridge University Press, 2007).

[ii]Angela Hegarty, “Truth, Law and Official Denial: The Case of Bloody Sunday”15 *Criminal Law*

Forum 199 (2004).

[iii]Phil Clark, "Hybridity, Holism and 'Traditional' Justice: The Case of the Gacaca Community Courts in Post- Genocide Rwanda", 39 *George Washington International Law Review* 4 20 (2007).

[iv]Tony F. Marshall, *Restorative Justice An Overview* 6 (Research Development and Statistics, 1998).

[v]Edward Bouverie Pusey, *The Confessions Of Saint Augustine* 5-6 (Kessinger Publishing, 2004).

[vi]Matthew, *New International Version Bible*, The New Testament: Matthew 2 (Word Of Life Press, 2009).

[vii]Jeremiah, *New International Version Bible*, The Old Testament: Jeremiah 706 (Word Of Life Press, 2009).

[viii]Paul, *New International Version Bible*, The New Testament: Galatians 185 (Word Of Life Press, 2009).

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