A REFLECTION AND RESPONSE TO *USING CRIMINAL PUNISHMENT TO SERVE BOTH VICTIM AND SOCIAL NEEDS**

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A few weeks ago, I was leading a Bible study about the parable of the Unforgiving Servant.[1] I want to tell you the story that this parable evoked from one of the participants. I'll call her Betty. Betty told the group that she had been unable to forgive one of her brothers for failing to repay a loan. In fact, so painful was the acrimony surrounding this event that she and her two siblings have been alienated from their brother for fifteen years. Betty claimed that she wanted to find a way to forgive her brother, but she felt powerless to do so and didn't know why.

In my experiences as a coach, minister, and counselor, I have known a lot of people like Betty who desire reconciliation but feel powerless to achieve it. They just don't understand why they can't do it—and in fact, feel ashamed that they have been unable to either receive an apology or to offer forgiveness.

It was interesting for the group to talk with Betty because we discovered that Betty was in a bind. On one hand, she desired reconciliation, but that would mean *letting go* of the strong alliance she had formed with her other

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* Erin Ann O'Hara & Maria Mayo Robbins, *Using Criminal Punishment to Serve Both Victim and Social Needs*, 72 LAW & CONTEMP. PROBS. 199 (Spring 2009).

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1. *Matthew* 18:21–35 (New Int'l). In this story, a servant who owes his master an absurd amount of money (millions of dollars) is ordered to be sold into servitude to pay his debt. The servant, who is terrified and beside himself, falls on his knees and pleads for mercy. Amazingly, the master takes pity on the poor servant and actually forgives the entire debt.

Shockingly, the servant leaves the presence of the master and seeks out a fellow servant who owed him a *few dollars* and roughly demands payment. His fellow servant falls to his knees and echoes the identical words that the first servant uttered earlier, "be patient with me, and I will pay you back." *Id.* at 18:29. But the unforgiving servant refuses and throws the man into prison. Other servants witness this outrageous behavior and word soon gets back to the master about what happened. The master calls the first servant back before him and lectures him, "I canceled all that debt of yours because you begged me to. Shouldn't you have had mercy on your fellow servant just as I had on you?" *Id.* at 18:32–33. Then, in anger, the master turns him over to the jailers until he could pay back all that he owed.

The punch line of the parable is, "This is how [God] will treat each of you unless you forgive your [sister and] brother from the heart." *Id.* at 18:35.

siblings. To repair the relationship with her brother, she would need to risk losing the favor of her other siblings who were *not* ready to let go of their grudges. The most difficult thing for Betty to admit was that she had gained a real emotional benefit by maintaining homeostasis.

Missing in discussions about apology and forgiveness are the huge emotional losses (or as William Bridges would say, the *endings*[2]) that must take place to just start the process. Using Bridges' question, "Who stands to lose what?"[3] we can see that the reason this has been such a difficult internal transition for Betty is that she must choose to let go of so much in order to begin a journey for which there is no guarantee of success. If she forgives her brother, she is likely to temporarily lose some of her power, status, influence, relationships, and routines (all powerful pieces of our identity).

Betty's feelings are similar to individuals and groups with whom I have worked. Take for example, fishermen of the North Atlantic who are so weary from years of economic hardship and declining groundfish stocks that it becomes a Herculean effort for them to envision a different future. They have endured so many losses that they are not just distrustful of government, but even of each other, making collaboration and advocacy problematic.

It is easy for me to hear similar frustrations and losses within the criminal-justice system and to see the ways in which these losses have become points of resistance to victim–offender mediation (VOM). In particular, I hear these in the resistance of those who represent the interests of the state—such as district attorneys and elected judges, who must constantly demonstrate to the public that they are doing their job of keeping society safe. Without a strong record of convictions, long sentences, and a tough-on-crime attitude, many of these folk could lose their jobs come the next election.

These public servants are often passionate about justice, but they are also hugely overworked and caught in the web of conflicting politics and professional advancement. One of the key points of resistance to reforming our justice system to make it a more healing and restorative place is that such reform would require those who represent the interests of the state to *let go of powerfully formed identities*. To make the seismic shift of rebalancing the scales of justice to include the victim's voice and see the value of healing the *private* wrong instead of just the wrong committed against the *public* will be difficult. In the same way that Betty had to risk much in order to enter the journey towards forgiveness, so too, legions within our justice system stand to lose much by agreeing to change our current model.

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2. *See* WILLIAM BRIDGES, MANAGING TRANSITIONS 19–66 (1991) (identifying three stages that people normally and predictably pass through as they make the emotional and internal transition to external events and situations). Bridges makes the case that we do not pay enough attention to the first stage, which he calls "endings," and the result is increased symptomatic behaviors, increased resistance, and conflict. *Id.*

3. *Id.* at 20–21.

Currently, we have a justice system designed to protect and punish. A hybrid restorative–retributive proposal would balance society's need to protect itself with the need to restore and heal. This vision may be inspiring to some, but for many state officials, this change would be terrifying because it would require them to transform their understanding about their work and, in so doing, to challenge the efficacy of most everything they have done in their careers.

To be fair, the focus of O'Hara's and Robbins' article is really on trying to design something that will bring greater balance to an out-of-whack system—primarily by empowering victims. Yet, without more to help manage the internal transitions of those who have built their entire identities around the current punitive system, even the best plans are likely to be sabotaged. Thus, my suggestion would be to develop a transitions-management plan for those who would be most affected by the changes proposed.

Throughout my work with congregations, groups, and individuals, I have noticed the tendency to frame apology and forgiveness as *all or nothing*. The way it is presented often feels and sounds like something that happens in a flash of amazing grace. In my own experience, it is more commonly a marathon journey that takes months, years, or a lifetime. This perception about easy forgiveness leads to a lot of guilt because when people are not able to just "do it" they feel like failures and give up. In reality, they are just getting started.

One of the things that I really appreciated in O'Hara's and Robbins' article was that they accurately describe the nuanced and complex nature of apology and forgiveness. These are not actions that can be programmed—they happen at their own pace and in paths that are winding and unchartable. One of the reasons that VOM is unpopular with some is that it can be emotionally messy and slow. Thus, one of the most helpful insights in my work has been that forgiveness is developmental, meaning that it often happens in normal and predictable stages. Forgiveness can be divided into manageable pieces.

Elisabeth Kübler-Ross helped identify the natural and normal stages of grieving.[4] In a similar way, William Bridges set forth a developmental model that predicts normal human responses to change.[5] Using an ethical, family-systems approach, Terry Hargrave has written about a model of forgiveness that is similar, divided into what he calls the "four stations of forgiveness": (1) gaining insight, (2) understanding, (3) compensation, and, finally, (4) overt forgiveness.[6] In this model, the two broader categories of exonerating and forgiving are part of the same journey, but are very different in their action.[7] I

4. ELISABETH KÜBLER-ROSS, ON DEATH AND DYING 34–121 (1969).

5. BRIDGES, *supra* note 2, at 19–66.

6. TERRY D. HARGRAVE, FAMILIES AND FORGIVENESS 4 (1994).

7. *Id.* at 60–67. Attaining the first stations of gaining insight and understanding about your life and the life circumstances of your offender is work that can be done on your own, without any real contact with the person who violated your trust. For many people, this work of understanding can lead to a tremendous release, a sense of exoneration once they fully comprehend the situation. For adult

reference this work to emphasize the point that the work of forgiveness, whether in the context of the family or in the context of the court system, is developmental and process-based.

This knowledge is incredibly liberating for people. I know from personal experience that when you give people permission to chunk this difficult work and do it in manageable pieces, there is an amazing sense of relief. There is so much shame around their failure to forgive that it is a true gift for people to see ways they can do this work in baby steps. Indeed, the O'Hara and Robbins article makes a strong point about the danger to victims of either a pressured, guilt-inspired forgiveness, or excessive and unwarranted forgiveness that places the victim and society at risk of repeat harm. Indeed, the article presents the outcome of some forgiveness as simply an apology or an explanation of actions. This fits with the work of Hargrave.

In my experience, one of the most powerful things one can do to help an individual or a group to travel smoothly through transition is to create ceremonies or rituals that acknowledge endings and new beginnings. These "markers" have a powerful healing effect because we are all spiritual creatures who seek meaning in the events and situations of our lives. With the notable exception of Yom Kippur, there are very few public rituals that help people with the difficult work of apology, forgiveness, reconciliation, and atonement.

Many groups currently using variations of VOM intentionally use broad spiritual practices to create "safe, if not sacred space"[8] for their work with victims and offenders. Constructing Circles of Peace,[9] in Nogales, Arizona, is a program started by a frustrated judge, which unapologetically follows the format of traditional Native American Peace Circles to heal carefully-screened domestic-violence cases. Counselors in the program create rituals and ceremonies that advance their work.[10] In my own counseling practice, I have often tapped into the power of ritual in helping people bring healing to their lives.

One of the benefits of O'Hara's and Robbins' proposal to give greater power and choice to victims is that, for those who choose VOM and for those who choose to exercise their choice in sentencing, it creates a quasi-ceremonial space that doesn't currently exist. Some participants to this symposium have made the noncomplimentary comment that victim impact statements run the

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children who are wrestling with the demons of a harsh or abusive parent now deceased, the work of exoneration may be the only avenue open to them to gain a sense of closure in the journey towards forgiveness. Only when it is physically and emotionally safe do people begin the process of receiving compensation and, ultimately, overt forgiveness.

8. This is a phrase that I first heard and learned from my interactions with Mark Umbreit, Director of the Center for Restorative Justice & Peacemaking, as well as the National Restorative Justice Training Institute, both at the University of Minnesota School of Social Work.

9. Peggy Grauwiler, Nicole Pezold & Linda G. Mills, *Justice is in the Design: Creating a Restorative Justice Treatment Model for Domestic Violence*, *in* FAMILY INTERVENTIONS IN DOMESTIC VIOLENCE 579, 585 (John Hamel & Tonia L. Nichols eds., 2007).

10. *Id.*

risk of becoming a "ritualized public performance."[11] But it may be worth taking this risk to reap the greater benefit that a victim might receive from having something rather than nothing. In creating a process that restores status and voice and the potential for a heartfelt apology, we are on the first step of transforming the justice system into a more healing space. Under the current system, in which the victim is so often shut out and shut up, there is no ritual and therefore, no healing. I applaud O'Hara and Robbins for their contributions in helping to push the system toward creating those "safe, if not sacred spaces" wherein the work of apology, forgiveness, and reconciliation can begin.

11. Susan Bandes, *Victims, "Closure," and the Sociology of Emotion*, 72 LAW & CONTEMP. PROBS. 1, 13, 16–17 (Spring 2009).