

A PRACTICAL PATH TO TRANSFORMATIVE JUSTICE

by Ruth Morris
June, 1994

KOHA
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***What's Wrong?
*Why Are We Stuck With It?**

***What's Better?
*How Can We Get From Here To There?**

In 1992 Toronto Quaker Activist, the late Ruth Morris, published her Transformative Justice Booklet.

I have sold and given away hundreds of copies to teachers, community, barristers, police and judges. Most at least agree with Ruth Morris, that the present adversarial system of justice has to change and quickly, especially in Aotearoa New Zealand, which is the second most incarcerated nation in the Western World behind the United States.

In May, 2011, our Deputy Prime Minister, Hon Bill English, described the prison system in Aotearoa NZ as a fiscal and moral failure.

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Introduction

Justice systems around the world are under enormous stress. We continue to fill prisons with untreated addicts, and with young poor minorities lacking lifeskills and job skills. Then we complain bitterly when the disempowering taint of institutions turns them out still angrier, more unemployable, and more likely to commit small property crimes. Yet political and social processes are pressing us deeper and deeper down into this quicksand. This paper addresses the problem, the forces helping to maintain the dilemma, and a positive, *practical, inexpensive remedy* which could make Ontario once again, as it was in the 70's, a progressive model for experts from around the world to visit.

To present this, we address the following questions:

1. WHY SHOULD WE CHANGE OUR JUSTICE SYSTEM?
2. WHAT IS TRANSFORMATIVE JUSTICE, & WHY SHOULD WE MOVE IT?
3. WHAT FORCES WORK AGAINST CHANGE IN JUSTICE?
4. HOW CAN WE CHANGE: A PRACTICAL GUIDE



1) WHY SHOULD WE CHANGE OUR JUSTICE SYSTEM?

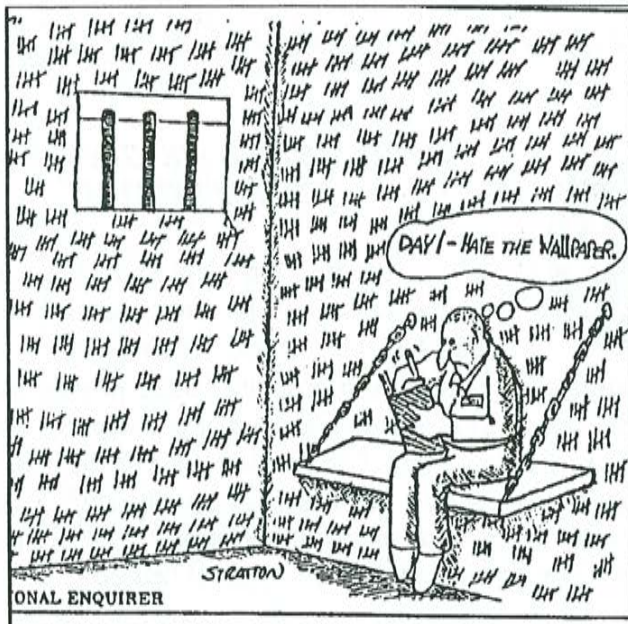
At the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, in 1990, country after country reported burgeoning prisons, and absolute failure in reducing crime through this trend. The poorer countries are desperate for better solutions, but creating more "alternatives to prisons" within our existing system usually fails because of "net widening". Courts are caught between the cross pressures of public fears, police and Crown anger, victim frustration, and their own fear of bad press. As a result,

they constantly find new ways to use planned "alternatives" as add-ons to increase punishment, instead of keep people out of prison.

So relatively minor offenders face a smorgasbord of alternatives, on top of a prison sentence. A period of prison may be followed by probation, accompanied by 500 hours of mandatory community "service" and a restitution order to the victim, plus a condition of getting drug treatment while on probation. In this example, 4 alternatives have been added to a prison sentence, and have not kept the offender out of prison.

But what is wrong with traditional justice? Basically, 4 things: it is an **expensive, unjust, immoral failure**:

A) EXPENSIVE: Prisons are more costly than any of their alternatives. The cost of maintaining a person in prison varies from about \$80 to \$200 a day, while the cost of alternatives such as probation, bail supervision, and community supervision work orders is \$5 to \$20 a day. Even halfway houses, the most costly community alternative, with their housing and 24 hour coverage costs, are usually a good deal cheaper than prisons. In general, consistent appropriate use of the best existing alternatives **could save us about 3/4 of our Correctional budget!** This fact alone is staggering.



B) UNJUST: Native Canadians are 6 times as likely as whites to go to prison in Canada. A research paper I did compared blacks and whites who were being held on detention orders in Toronto while awaiting trial. It demonstrated at very high levels of statistical significance that blacks are more likely to be given a detention order than whites with the same bail characteristics. The book title The Rich Get Richer and the Poor Get Prison sums up the major function of prisons in our society. By every measure, poor people and racial minorities have a higher risk of conviction and of going to prison in our society.

C) IMMORAL: Most countries in the world have moved beyond capital punishment and torture as accepted methods of response to crime. Neither can wreaking revenge on our fellow human beings by caging them be viewed as a progressive response to our social differences. Our retributive justice system is based on a spirit of revenge which does not satisfy the primary healthy needs of victims, offenders, or society. Moreover, the great majority of offenders are young people whom society has failed to protect from abusive homes, or sterile institutional environments. Having failed to provide them with a safe, nurturing childhood, we go on to exact lifelong revenge toward them for their resulting character defects. Setting limits for their unacceptable behavior is wholly appropriate: exacting a cycle of unending blame and revenge is not.

D) FAILURE: Recidivism rates from prisons range from about 40% to 85%, and are consistently higher than for any alternatives. Prisons are supposed to deter, protect, rehabilitate and punish, simultaneously. In fact, they only do the last. They fail to deter others, to protect the public from crime and criminals, and they fail abysmally to rehabilitate.

What prisons do best is to INSTITUTIONALIZE, and to embitter angry young men from low income minorities. What courts do best is disempower victims and offenders, so that they are unable to solve the problems that have led to the crime, and the problems caused by it. We need to change our justice system, because it does not meet the needs of victims, offenders, or the community.

Without going into as much detail, only transformative justice deals fully with the deep need of offenders both to assume responsibility for their crime, but also to find healing for its causes, while accepting social controls to prevent a recurrence. Similarly, society's needs for both healing and security are maximized through the empowerment and cooperative building processes of transformative justice.

3) WHAT FORCES WORK AGAINST CHANGE IN JUSTICE?

Given all the advantages we have outlined so far for a transformative justice system, it may seem surprising that we still have a retributive justice system in power. However, there are a number of forces working to maintain the status quo in our justice approach:

A) TURF: existing institutions always operate to protect their own turf. People in traditional justice jobs naturally want to maintain them, and are loath to believe that anything they have been devoting a career to could be destructive.

B) PROJECTION: a long-standing social way we deal with our anger is to project it onto acceptable scapegoats - racial minorities, the poor, the mentally ill, social rebels. Modern society is trying to revise this, working to reject these outlets. The existing retributive system allows us to label and punish large segments of the poor, minorities, the retarded or mentally ill, and social rebels, as criminals. By identifying their unacceptable behavior, we can righteously project onto them all the anger for our social ills, without asking whether other groups and individuals are not causing greater problems: environmental damage, the threat of nuclear war, industrial accidents, and large-scale unemployment. Rather than look at the major social hazards causing big social problems, we project all our anger onto the largely nonviolent criminals who fill our courts and prisons, and who come from low status groups in society.

C) REINFORCING STATUS BARRIERS: Closely related to the last point, the retributive justice system is one of the few solid barriers which bolsters our existing status system: class, racial,

sex and ethnic lines. When I see white guards leading handcuffed black prisoners around Old City Hall, I am reminded that the form has changed, but the spirit of slavery is still around. In a world where all our economic systems are crumbling, the retributive justice system reinforces with iron law the validity of old class and racial barriers.

D) PSEUDO-SECURITY: The world lacks a common religious faith to answer the great whys of accident, disease, and disaster. In a world where there is no true security against these imponderables, the court system with its formal robes and bows, its iron cages and locks, offers quite literally a concrete substitute for the deeper security we have lost touch with.

With all these things going for it, and all the strength of fear, anger, and power systems behind it, what gives me hope that we can change? The answer is, the sheer inefficiency and destructiveness of the retributive system. While change forces suffer from burnout and throw-out (nowhere is radical ejection more common), the system itself makes new converts to change all the time, by its crude destructiveness of the interests of all those most affected by it.

4) HOW CAN WE CHANGE: A PRACTICAL GUIDE

A practical way of transforming our justice system must take into account the forces of resistance to change just described. I believe the most effective path is through *legislation*:

- Requiring that Transformative Justice Courts be offered in all jurisdictions
- Keeping both traditional and TJ Courts available to all. TJ Courts would only be used if both victim and offender chose them.

This approach avoids a number of traps which have short-circuited many change efforts in numerous fields:

A) By **DIRECT LEGISLATION**, it cannot be shelved as are most Commission Reports and Policy Papers

B) By making it a **CHOICE**, and not discontinuing the traditional courts, we should limit blockage from bureaucratic

resistance and victim fears. This should also lower public fear reactions, and the potential for political criticism.

C) **ELIMINATE TRIVIALIZATION:** Diversion and other pretrial alternatives have always had difficulty accessing cases of serious crime. By requiring the police to inform fully, in writing, every victim and offender of the option, we would eliminate the possibility of TJ Courts receiving only Trivial Cases.

D) By providing community resources in TJ Courts to support the healthy healing needs of both victims and offenders, we would **QUICKLY ATTRACT MANY CASES WITHOUT COMPULSION.** TJ Courts would win support through their natural superiority to traditional courts.

TRANSFORMATIVE JUSTICE COURTS

Transformative Justice Courts would be offered as an option to every victim and offender, with the following process:

A) Each victim and offender would be supported by a team of 3 who would assist them in finding a transformative outcome for both parties. Where there were others directly affected, they would be included in the process. The emphasis would be on empowering victims and offenders (individuals or groups) to identify and create healing, transformative responses to the situation. The team of 3 resource people would include:

- I) A **MEDIATION SPECIALIST-** to see that the best spirit of mediation is followed.
- II) A **TRAUMA/GRIEF SPECIALIST-** to see that the trauma and grief needs of each party are respected and met through the process.
- III) A **COMMUNITY RESOURCE SPECIALIST-** to identify community resources which can help in building creative, transformative outcomes.

All 3 would have some training in each other's areas. The TJ Court Team would take a facilitative, not an authoritarian role. However, at the end of the 3 months, either participant could opt out

of the TJ process, provided one month's notice was given to avoid impulsive decisions. This would provide the usual court process for cases where the TJ Court process was not working well, and should further reduce fear of the transformative justice option.

The Facilitating Team would assist victim and offender to go through the following process:

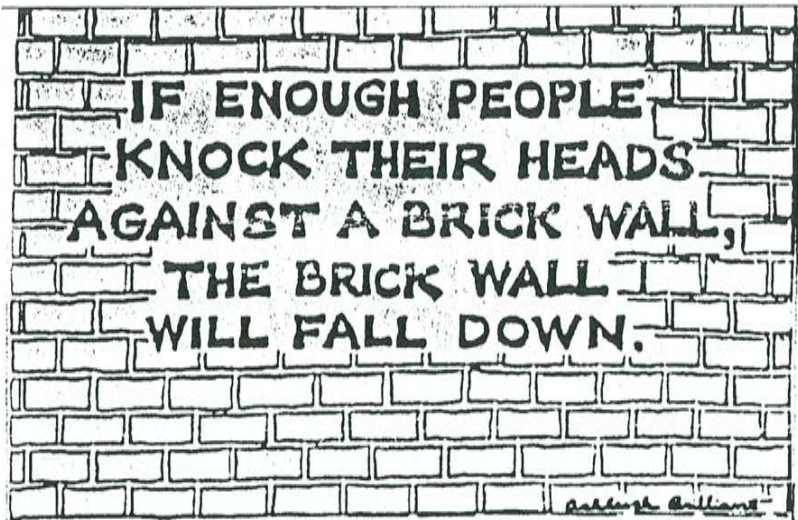
- 1) Creating groundrules for physical and emotional SAFETY for all participants.
- 2) RECOGNIZING THE WRONG the victim has experienced, and identifying the responsibility of both *offender and community* for that wrong.
- 3) Providing ANSWERS to the victim about facts that haunt victims, and about why this happened to him or her.
- 4) Supporting the VICTIM in their natural GRIEF PROCESS, and helping both parties understand better the normal needs of trauma and grief.

When these steps have been taken, primarily for the victim, the second phase, focused more on the offender, can be implemented:

- 5) RECOGNIZING THE WRONGS the offender has experienced, which contributed to her/his life situation, difficulties and to the offence.
- 6) Providing ANSWERS for the offender, as far as possible, about the whys for the wrongs s/he has experienced.
- 7) Supporting the offender in EXPRESSING THEIR GRIEF over the wrongs they have experienced.

When these core needs of the victim and offender have been addressed, it is time for the steps forward in creative transformation:

- 8) Agreeing on concrete RESTITUTION TO THE VICTIM for the pain s/he has experienced. Both the offender and the TJ Court Team would offer resources, and all could provide ideas,



CONCLUSION

In conclusion, the creation of Transformative Justice Courts is a practical and vitally needed innovation which could be implemented to the gain of victims, offenders, and the wider society. It would save public money in a wide variety of ways, increase public safety, and offer a model which experts from around the world would come to see. It answers the major dilemmas justice systems face today, and does so in a way which would minimize reaction and fear. Many details would need to be ironed out in the process, but there is nothing to prevent the plan being implemented rapidly as recommended, and every reason for doing so.

A government which implements transformative justice would give its people something in which they could take pride. Such a government would have given us desperately needed social healing. Above all, such a government would show vision, vision of a community where stigma and fear are replaced by compassion and healing. We can create a community where all our people are respected and empowered. Transformative justice offers us exactly that potential.

Abolitionists argue that the institutions that constitute what we call the criminal justice system have failed to assist in building or sustaining communities. Therefore it is urgent and imperative that we think about and develop new practices to deal with events in the realm of harm and justice.

Abolitionists believe that the widespread elimination of the failed prison experiment (only two centuries old) is necessary and that new practices to respond to harm must support the widely shared values of interpersonal safety, justice and healing.

This is not a naïve “open the prison doors and let everyone out” tenet, but a considered and evinced “everyone agrees prisons are abject failures” proposal. The experiment has drastically failed.

The time and place to pursue and develop alternatives is here and now – and not some distant future where the unfulfilled promises of the penal system finally arrive.

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**CANADIANS ARE SPENDING 7.7 BILLION DOLLARS A YEAR
ON A JUSTICE SYSTEM WHICH DOES NOT MEET THE NEEDS OF
VICTIMS, OFFENDERS, THEIR FAMILIES, OR THE WIDER
COMMUNITY**

**THIS BOOKLET IS ABOUT A PRACTICAL WAY,
A BETTER WAY,
A CHEAPER WAY
AND A MORE HEALING WAY**

ABOUT THE AUTHOR

RUTH MORRIS is a Quaker with a doctorate in sociology and social work. In 25 years as a social activist, university teacher, community organizer, writer and speaker, she has played an active role in building new systems of healing justice. Founder of the Toronto Bail Program, 2 halfway houses, and a community mediation service, she has worked actively with street people also, and received a Provincial Award in 1987 for her work for the homeless in Ontario. Her pioneering includes founding the International Conferences on Penal Abolition, and helping Canadian Quakers to be the first religious group in the world, in 1981, to arrive at consensus for prison abolition. She has done consulting work with the UN in Latin America, and spoken widely on transformative justice in Central America, and the USA and Canada. She has done over 200 media and public appearances in recent years on healing justice topics, and has just returned from a 5 week speaking tour in New Zealand/Aotearoa and Australia.

She is the author of Crumbling Walls, Why Prisons Fall, Street People Speak, Christian Faith in Action, and Journey to Joy. Other pamphlets by her include "Creative Alternatives to Prisons," "But What About the Dangerous Few?" "Seeds of Abolition," and "The Risk of Loving".

Her commitment in life is "To help all of us include those who fall in the cracks of society, and transform negative forces into resources for change."

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This booklet is available from:

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