

Righting Wrongs: The need for dialogue  
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What should we do with people who commit criminal offences? This age-old question has troubled theologians and philosophers for millennia and much ink has been spilled trying to answer it. I'm not going to try to summarise or analyse these literatures in this short paper – I suspect that those who have commissioned this book of essays are seeking practical answers rather than philosophical responses. That said, there is nothing more practical, I think, than a good theory capable of guiding practice – and the 'should' in the question does invite a *moral* theory.

But let me start somewhere else. Using the available criminological and sociological evidence, it might be easier to answer a different but related question – 'What *does* happen to people who commit criminal offences?'. Although most offences do not lead to conviction, when they do, our main response seems to be to impose harms on 'offenders'. In a range of different penalties (which we often combine), we diminish and degrade their social status (through conviction), their material resources (through financial penalties and the opportunity costs of other sanctions), their autonomy (through requiring them to submit to forms of supervision and/or treatment) or their liberty (through imprisonment). These are just the *intended* harms of retributive punishment. We can also add to the list foreseeable but *unintended* harms, for example, to their development as people, to their family lives and social ties, to their future prospects, and to their physical and mental health. And we can, and should, also add the reverberating harms suffered by their loved ones.

Thus, the paradox of retributive punishment is that, while in theory it aims at restoring balance by returning harm for harm and removing illegitimate advantages that offending may have provided, in practice it often damages the capacity of the punished person to live well in the future. So rather than restoring an imagined equilibrium, it exacerbates the social disturbance that crime causes. Though we sometimes talk of punishment as 'teaching people a lesson', rather than educating people for a law-abiding and productive future, punishment seems to disable rather than enable, to disintegrate rather than reintegrate, to injure rather than to remedy.

Partly for these reasons, some prefer rehabilitative responses to offending – responses that are more clearly directed at the project of understanding and addressing whatever lies behind the crime. That said, both in theory and in practice, in exploring and addressing crime's supposed causes, rehabilitation has tended to focus narrowly on assumed flaws within individuals (or in their immediate social networks of family and friends) – and on correcting these flaws. At its worst, neglecting the role of wider social inequalities in causing crime and in shaping criminalisation and punishment, this kind of approach has ridden roughshod over human or civil rights, even exposing people to much more extensive periods and intrusive forms of social control than their offending might have deserved in the first place. The most thoughtful advocates of retributive approaches, have recognised and stressed the harms that punishment causes, and so have been careful to caution restraint, parsimony and proportionality in the use of penal power. By contrast, where rehabilitationists have thought that they were doing good to people in need and neglected the harms associated with rehabilitation, they have often neglected the need for restraint, carelessly subjecting people to the power of dubious 'experts' who claimed to know what was best for them.

These moral problems with rehabilitation highlight the importance of justifying and limiting the use of penal power in whichever ways we choose to use it. Penal power, after all, ultimately relies on the threat of force; it is underwritten by the possibility of (albeit supposedly legitimate) state violence. In our criminal justice systems, an 'offender' who resists may not lawfully be battered, beaten and broken *as punishment*, but their punishment can include being physically forced into a cell (ultimately a segregation cell) where they will be held against their will. No-one disputes that kidnapping is a violent crime; it can be argued that penal power, at its base, rests on the threat of state-sanctioned kidnapping.

It follows— as reflected in the principle of parsimony — is that we should only use that power if and when we really must but determining the answers to these 'if and when' questions is not easy. If we are concerned with responding to crime in ways that censure wrongs, communicate our values and encourage better conduct, a good first question to ask is whether we need to use penal power to achieve these ends? The distinguished Norwegian criminologist, Nils Christie, famously argued that crimes represent conflicts between citizens, that these conflicts are the property of the citizens concerned and that, in criminal justice, the state steals the conflict from those involved<sup>1</sup>. Both 'offenders' and victims become the fodder in a state-centred project of punishment and social control. Resorting too often to formal criminal justice, underwritten by penal power, might then be harming victims and communities as well as 'offenders'.

An obvious alternative — as suggested by advocates of restorative and reparative approaches — is to mediate the resolution of the conflict through a process of dialogue. If we turn our minds briefly to the ways in which we try to socialise our children, it seems obvious that dialogue is our principal and best mechanism. Good parents, most would agree, respond to their children's wrongdoing not by immediately imposing suffering on them, but rather by discussing what they did that was wrong, why it was wrong, why they did it, what effects it had on others, why and how they should apologise, and why and how they might make amends. It is through these difficult conversations that our values are communicated, justified and reinforced. Of course, in that dialogue, our values might also be challenged. The child might argue back that the rule or norm itself was wrong, or that departing from it was justified in the circumstances. Maybe the parent will be persuaded that *they* were wrong to impose the rule or to deny the child the means to abide by it or in failing to take account of the circumstances.

Bad parents, by contrast, don't listen. They shout. They lose their temper. They lash out. They act like bullies. The rush to the use of force — whether physical or psychological. While this may secure short term control, it stores up problems for the future because rather than producing normative development it settles for resentful submission and mere obedience, sowing the seeds of resistance.

In good parenting, processes of normative development rest within and rely upon the framework of long-term, loving relationships. We are careful about sustaining the relationships we have with our children. That doesn't mean ignore the wrongs that they do — quite the reverse; love demands and require that we nurture and sustain constructive, respectful and dialogical relationships with them.

Adult people who have offended are not children and should not be treated as children. But if we want to live in a civil, safe and fair society, then we would do well to note the importance of long-term relationships, of compassion and of dialogue in the ways that

we respond to wrongs. And we should note the risks and threats that are creating by relying on force to secure obedience.

So my short answer to this complicated question is this. When people offend, we should listen to what they have to say about it. We should talk to them about what they have done, why they have done it and how we might best respond to the wrong. In these kinds of sensitive and challenging conversation, rather than assuming a position of entitlement and moral superiority, we should ourselves expect to be surprised, challenged and corrected. If the dialogue identifies a need for some kind of help to assist the person to function and flourish in the community, then we might explore rehabilitative options. If apology and reparation can be made, then we should also explore those possibilities with all of those concerned. And if we are met with silence or resistance or rejection or violence, perhaps we may need, with regret, to make use of penal power to impose constraints to protect ourselves and others. But, even then, we should ask ourselves, what were the roots of this silence, resistance, rejection or violence, and have we been complicit somehow in generating it – either because of our response to the offence or because of some earlier wrong that we have neglected to repair?

<sup>1</sup> Christie, Nils, (1977) 'Conflicts as Property'. *The British Journal of Criminology*, 17(1): 1–15. <https://doi.org/10.1093/oxfordjournals.bjc.a046783>