

# Ten Responses to 'Words on words'

## 1. Western words

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My reaction to the thoughtful reflections of Nils Christie is mixed. The inspiring iconoclast that is Nils challenges foundations of our theories. I am less ambivalent about the concept of crime than he. Indeed, for me the concepts crime and justice are great inventions of human vision.

Consider the practical use of the crime concept for lifting the western world from its current vortex of unemployment and fiscal imbalance. A useful step toward fiscal balance in some parts of Europe is for tax cheating to be viewed as a crime, seen as shameful. In the United States there is a limited consensus that tax rates must be increased to extricate the country from its debt; the world economy continues to stumble because Republicans refuse to vote for sufficiently steep tax hikes. Increasing tax rates for the wealthy is certainly desirable. Yet the US, like the UK, may not need to further increase taxes to balance its books as much as it needs to persuade its ruling class that it is shameful to cheat on taxes, to use tax havens and other tax shelters that flout the law's intent, that it is right that its wealthiest individuals and corporations pay as much tax as its middle class. The path to that objective is not to put most of the American ruling class in prison as tax cheats. Nor is it endless litigation. It is restorative justice conferences that engage in a dialogue to persuade wealthy American corporations and individuals that there is a moral imperative to exit from tax havens, and it is right to settle by paying tax penalties (Braithwaite, 2005; 2012). This admittedly must be done under the shadow of confiscation of assets, suits in which internal whistle-blowers win a percentage of the tax penalty, and imprisonment enforced by the criminal law.

Of course it would be a huge fiscal help if the US and UK also desisted from starting wars (and pressuring other indebted states to join them). One thing that would assist with that objective would be to look back upon the Iraq war as a crime of aggression under international law. President George W. Bush and Prime Minister Tony Blair both engaged in criminal conduct when they wilfully misled their people with the claim that this was a war to protect them against Saddam Hussein's weapons of mass destruction.

This is not to argue that Bush and Blair should hang in the same way as Hussein. It is just to argue that there is a noble human purpose in seeing their crimes as shameful and as crimes. Nils Christie once asked of hanging those convicted at Nuremberg: how could one broken neck balance the slaughter of millions? Likewise, how could Tony Blair's broken neck, or Saddam Hussein's, balance the suffering of the slaughtered children of Iraq?

Theoretically, what delivers practical value to the crime concept is not that it tracks us to punishment. On the contrary, we might seek to uncouple crime and justice from any necessary connection to punishment. The concept is of most use when crime is constituted as distinctively serious and shameful wrongdoing. Compare rape, which is a crime, with the late return of a library book, which is routinely punished by a fine (but is not a crime). We do not need criminalisation or restorative justice to make libraries work. Fines work well enough. But times and places in human history where rape is not constituted as shameful by the criminal law are space-time contexts that endure high rates of rape (Ahmed, Harris, Braithwaite & Braithwaite, 2001: 28–30; Braithwaite, 1995; Pinker, 2011: 196–200). Times and places that regard drunk driving as not really criminal are contexts with high rates of road slaughter.

We need a strategy that retains ritual seriousness for the crime concept: one that regularly renews the shamefulness of crime through ceremonies that are not stigmatising, and that advances the struggle to uncouple crime and justice from hard treatment. Restorative justice can be that strategy. It is now supported by a vibrant social movement politics organised around that label. So we must chide its defects while being careful to defend those core accomplishments. While there are theoretical differences between us, I would say the chiding by Nils Christie in 'Words on words' honours that obligation in a way that is true to the Christie genius for critical reflection.

Properly conceived, justice is a holistic concept that includes procedural justice, distributive justice, social justice, and restorative justice, alongside last resort to punitive justice. That said, all the Christie arguments in favour of reconciliation as an alternative seem good arguments. We might also note here the greater embrace in United Nations discourse of 'reconciliation' than of 'restorative justice', though both are increasingly well received. On the other hand, in international law discourse, reconciliation tends to be separated from truth and justice, where justice is narrowly thought to mean punishing people through criminal trials. Consistent with the Christie concerns, retributivists are winning against restoratists in the battle for the soul of 'transitional justice'.

Hence, I find attractive the alternative move of Dan Philpott and Jennifer Llewellyn (forthcoming) that sees reconciliation as historically part of what justice means, part of justice as *shalom* in the Christian and Judaic traditions, of justice as *salam* in Islam, of justice as *ubuntu* in Zulu, Xhosa traditions and increasingly in a pan-African tradition (see also Philpott, 2012). That leads to seeing all the concepts in the Christie paper—offender, mediation, justice, restoration, reconciliation—as from the North and West. Most of us live in the South and East. So if we are from South Africa it will be more useful

to think in terms of *ubuntu* than reconciliation; if from Rwanda, better to think in terms of *gacacca* than restorative justice. Yet as we do that, there will be great reward from reading the thoughts of Nils Christie in a journal called *Restorative Justice*. And there will be riches for that journal to publish pieces on *ubuntu* and *gacacca* that do not mention the term 'restorative justice'.

## References

- Ahmed, E., Harris, N., Braithwaite, J. & Braithwaite, V. (2001). *Shame management through reintegration*. Cambridge: Cambridge University Press.
- Braithwaite, J. (1995). Inequality and republican criminology. In J. Hagan and R. Peterson (eds.), *Crime and inequality* (pp. 277–305). Palo Alto: Stanford University Press.
- Braithwaite, J. (2005). *Markets in vice, markets in virtue*. Sydney: Federation Press.
- Braithwaite, J. (2012). Flipping markets to virtue with Qui Tam and restorative justice. *Accounting organizations and society*, [www.sciencedirect.com/science/article/pii/S0361368212000785](http://www.sciencedirect.com/science/article/pii/S0361368212000785) (accessed April 2013).
- Philpott, D. (2012). *Just and unjust peace: an ethic of political reconciliation*. New York: Oxford University Press.
- Philpott, D. & Llewellyn, J. (eds.) (forthcoming). *Restorative justice, reconciliation and peacebuilding*.
- Pinker, S. (2011). *The better angels of our nature: why violence has declined*. New York: Penguin.

## 2. More words on words

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Words have multiple definitions and meanings. Further complexities arise when words and ideas are translated from one language and culture to another. Christie wrote 'Words on words' in English, but his homeland is Norway. This matters for the words he chooses and for his thoughts on restorative justice, as they are rendered in English. As one of the founders of abolitionism in European criminology, it is not surprising that the term 'conflicts' continues to be central to his analysis. Not crimes, not wrongs, not harms, but *conflicts*. When Christie (1977) put forward the idea that conflicts have value, it was a wonderful insight, and it remains so. To imagine that the content of conflicts could be a type of property, worth mobilising for the betterment of society—that was original. Idealistic too, but it invited reflection on the ability of all society's members (not just 'the professionals') to engage in a wide-ranging discussion about what is right and wrong, or what should be done when conflict emerges.<sup>1</sup>

In 'Words on words', Christie suggests that conflicts can be a basis for improving society and individuals, if they are 'tamed and used in a good way'. He says we need a better term to characterise alternative ways of 'handling conflicts', and restorative justice is not the right term. No, 'it sounds like a bad choice'. He proposes 'less heroic' terminology: 'handling conflicts in civil ways'. This is an ambiguous conclusion: is he suggesting that we dispense with penal law and use civil law instead? Or is he suggesting that we act with greater civility when handling conflicts? Or a combination of the two, a variant of the 'civilisation' thesis (Bottoms, 2003)?

My response to Christie's words is 'more words', with these points. *First*, 'conflicts', as a term, does not sufficiently encompass all that occurs in human society when individuals, groups and organisational entities seek to hurt, degrade and destroy others. We should retain the idea of wrongs and, with it, penal law as one mechanism of response, although not the sole mechanism. *Second*, I agree with Christie that the term 'restorative justice' should be replaced, but not for the reasons he gives. I propose the term 'innovative justice', which includes a variety of justice mechanisms—administrative, civil, penal, and those in civil society—to address wrongs. *Third*, I agree that reconciliation between parties 'in conflict' or having been wronged should not be expected; this and related

<sup>1</sup> Christie's (1977) ideal neighbourhood court is less remarked upon, but it was (and is) a creative way to address wrongs. I consider it in the punishment section.