

Restorative Justice or Impunity: The Choice for East Timor

Duane Ruth-Heffelbower, November 29, 2001

The call for an international tribunal to try those accused of crimes against humanity in Indonesia's frustrated attempt to seize East Timor shows once again the futility of retributive thinking. If the only source of justice is through punishing the evildoers, there will be no justice in Timor. Those who work for peace should be the last to work for the impunity of those who have done great harm, but by joining the international tribunal bandwagon that is exactly what they become: advocates for impunity.

When Indonesia came into being following World War II it followed a plan that looked very much like what Americans before them had called "our manifest destiny." Sukarno and his compatriots wanted to include all of the former Dutch East Indies in the new nation. He also did not want to share islands with other states, and mounted wars against those who continue to share the island of Borneo. The Borneo adventure fizzled, but there was success in getting the Dutch half of New Guinea, with western connivance, and finally in annexing East Timor after the Portuguese left in 1975. Western powers and the U.N. never acquiesced in the Timor seizure, but neither did anyone do anything of significance about it beyond talk.

The Indonesian military played a role in Timor not dissimilar to the United States Cavalry in pacifying the American west. It was an invasion, pure and simple. There were atrocities on both sides. The winning side had much superior firepower and support. The native inhabitants either accepted defeat with all that entails, or joined guerilla bands. The stories are similar. The difference is that the court of world opinion was against the Indonesian effort to acquire East Timor. When the economic crisis in Asia brought down Indonesia's political house of cards, the struggling nation needed world community support more than it needed East Timor. The U.S. did not suffer the same fate in its seizure of western lands from their native inhabitants. Canada's story is different, but there are similarities.

Let us suppose that an experience like Indonesia's had befallen the young United States of America around 1870, when the western native tribes were not yet pacified, and the national population was under 39 million.¹ A long civil war had ended five years earlier, leaving devastation and poverty for many. The flood of European migration that would industrialize the country and build its food production capacity was just beginning. If at that point there had been an economic crash that bankrupted the national treasury, drained the military of resources, and sent the government to Europe for help, what might have happened?

Suppose that the native tribes had also sent representatives to Europe who toured the capitals extolling the virtues of life in harmony with nature and told of the evil invasion of the greedy Americans who had committed untold atrocities. What if a united Europe had made aid contingent on giving the native tribes of America self-determination, and a referendum resulted in large tracts of the American west and midwest seceding from the nation, with hundreds of thousands of American settlers forced to flee back to the east. Other than the geographic scale, you would have Timor.

¹ Canadians, Australians and New Zealanders may want to use their own history as a comparison.

Now suppose this same united Europe demanded an international tribunal to bring to justice those Americans who had committed crimes against humanity in the attempt to pacify the American west. That's the current situation for Indonesia.

Suddenly, foreigners are calling the heroes who fought and died for the nation criminals. Their families, widows and orphans are being told their fathers and husbands were evil men. What would the response of an American be in such a situation? As it happens, the response of Indonesians is the same. The families of Indonesia's heroes are organized and know how to lobby the government to prevent the desecration of their family members' memories. To permit foreigners to spit on the nation's heroes is unthinkable, and any civilian government official who openly talks about agreeing to such a thing becomes a political pariah.

If justice for the Timorese can only be found by punishing Indonesia's patriots, however wrong-headed they may have been, there will be no justice. Those of us who want peace with justice for the people of East Timor and Indonesia need to find another way. Fortunately, there is one. It is called restorative justice.

The Restorative Alternative

It is not surprising in the wake of 9-11 to find people thinking retributively about justice. The relational values that form the foundation of restorative justice seem to have no place when we are talking about the kind of people who fly jetliners into buildings or those who help them do it. The approach Rome took with Carthage seems reasonable to many for dealing with terrorists. Of course it is equally implausible to think that the retributive methods will do much to deter terrorists. Instead of asking who is guilty, and what punishment they deserve, we need to start asking who has been harmed, and whose responsibility it is.

Those who have worked with victim offender mediation know that it is uncommon to have a completely one-sided case. The offender has always done something they should not have done, and which caused harm, but it is usual to find that the offender was first a victim. When the offender takes responsibility for his or her actions and does what they can to make things right with their victim, they are also taking the first step toward their own recovery from victimization. While it is a rare VOM program that follows up the offender's prior victimization, that is exactly the missing piece in larger cases such as the situation in Timor.

The scenario for using restorative justice to achieve reconciliation between Indonesia and the people of East Timor is actually simple. The beginning that would probably work best in the culture would be for the leaders of the two countries to agree that they wanted to make things right between them, and to begin a reconciliation process. Both current leaders have already expressed a desire for reconciliation in public comments. This idea would need to be socialized among the citizens of the two nations in a broad way, talking in many different ways and many different forums about the importance of reconciliation, and of the commitment to be constructive which must precede the effort. A large group of facilitators would be prepared to work in the process.

The next stage would be for the surviving combatants in their own groups, using trained facilitators, to work through the feelings of injustice they have felt relating to the whole Timor situation. These would be substantial lists. Once these groups had processed the issues internally and were committed to being constructive, a series of group meetings of former combatants from the two sides would come together for purposes of acknowledging the injustices each group felt, and to discuss what was needed to make things right. These representatives would carry the results of the conversations back to their groups to keep everyone connected.²

When these meetings agreed that the injustices had been acknowledged, and that there was agreement on what needed to happen to make things right, they would also agree on ways to monitor performance, being clear about the future. Then they would begin to do what they had agreed to. As these agreements were made and kept, trust would grow.

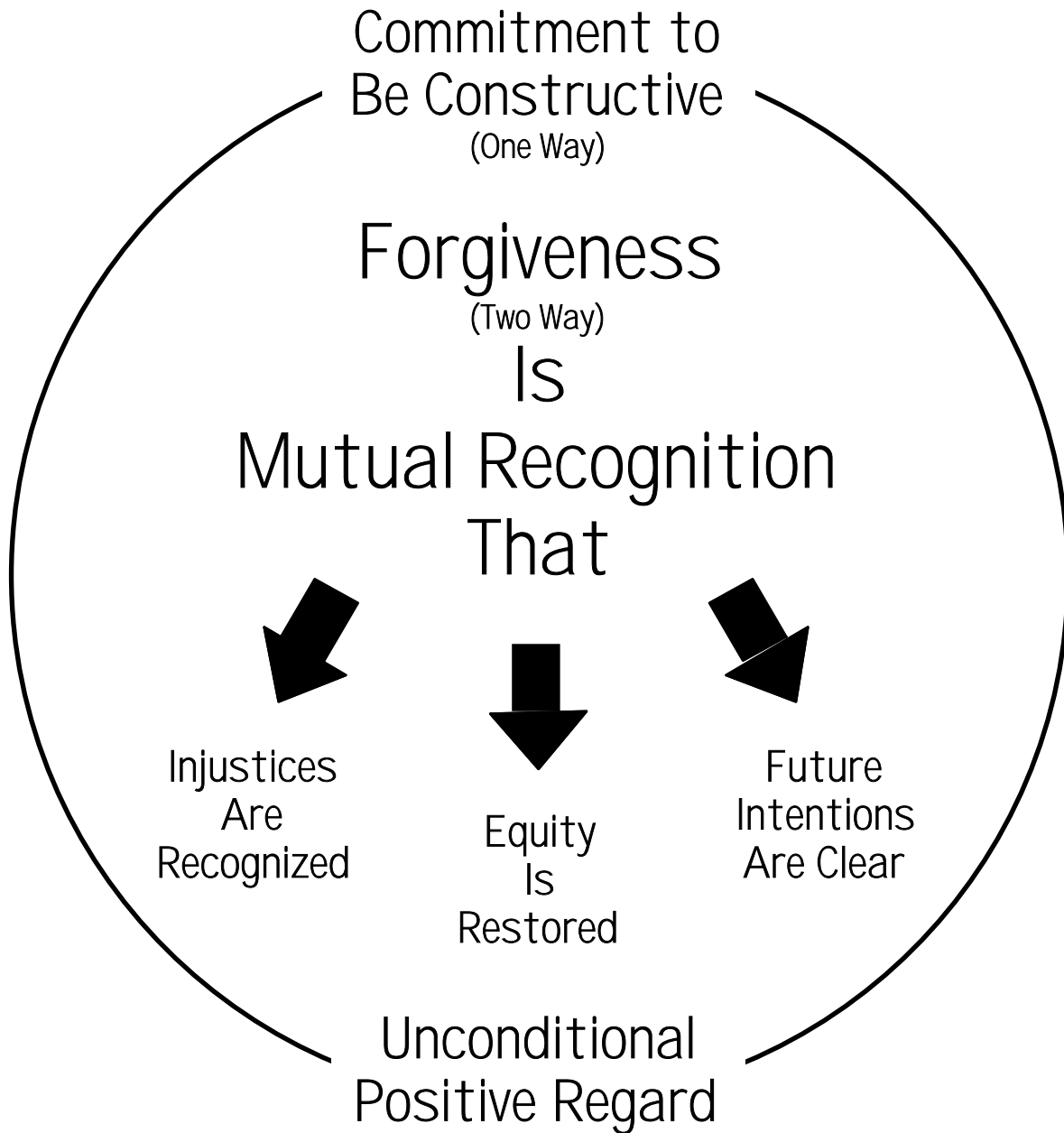
The next stage would be for members of the general populations of the two sides to do the same. The basic idea is for representatives to do the sort of process commonly used in victim offender mediation, and to keep communicating the process and its results to their constituencies.

The results would be agreements that injustices had been acknowledged, and a plan for making things right. As the plan was followed, trust between the two peoples would grow, and the sense that justice had been done would also grow. The English version of Ron Claassen's Peacemaking Model³ as I have modified it for use across cultural boundaries shows the process in graphic form:

² Many American veterans have found healing in talking to their former enemies about shared experiences, or in working to bind up the wounds of war as a way to help restore equity.

³ Ron Claassen developed this model while serving as the founding director of Victim Offender Reconciliation Program of the Central Valley in Fresno, CA. He is currently co-director of the Center for Peacemaking and Conflict Studies of Fresno Pacific University. More information about the model and its use in large scale reconciliation processes can be found on the PACS web site www.fresno.edu/pacs/docs/, or in my book, available through PACS, *Conflict and Peacemaking Across Cultures: Training for Trainers*.

Peacemaking Model



When Agreements Are Made and Kept,
Trust Grows

People who participate in victim offender mediation usually say that a process like this one leaves them feeling more satisfied than any retributive process.⁴ It doesn't always work, usually because the commitment to be constructive is absent, but it works most of the time. Doing the process with representatives is also fairly common, as is doing the process in fairly large groups. The trick in the case of Timor is scaling up a well-known process to work among peoples. To do so would require discipline and persistence, but it is doable, and much more so than the retributive options.

For the last two years I have been training Indonesians from throughout the archipelago, as well as Timorese,⁵ how to do this reconciling injustices process. While it is not natural for them, it goes pretty well and finds ready acceptance, more so when someone from outside leads the process. This creates an opening for those from outside Indonesia to help the search for justice. Anyone experienced in victim offender mediation, family group conferences or similar processes has a good beginning for leading the type of meetings described in this paper. A U.N. sponsored reconciliation team of experienced victim offender workers, suitably prepared for the cultural aspects of the work, and with support of the two governments, could make a significant difference over a period of time.⁶

Restorative justice or impunity. That is the choice facing us in Timor. Those who work for peace must also work for justice.

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⁴ Studies on the subject can be accessed through the publications and links on the Victim Offender Mediation Association web site www.voma.org.

⁵ Over 1,000 individuals have received training to some extent in the Empowering for Reconciliation process by the team from Duta Wacana Christian University in Yogyakarta over the past two years. Reports on those processes are available on the PSPP web site <http://www.ukdw.ac.id/lpip/pspp>.

⁶ UNICEF has begun to do this type of work in Ambon between Christians and Muslims with its workers receiving training in the Peacemaking Model described here. Thousands have been killed in the last two years by fighting between the two groups.