

Resolution on

Restorative Justice

Approved by
The 214th General Assembly (2002)
Presbyterian Church (U.S.A.)

PDS #OGA-02-050



Resolution on
Restoring Justice

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The 214th General Assembly (2002)
Presbyterian Church (U.S.A.)

Developed By
The Advisory Committee on Social Witness Policy
of the General Assembly Council

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To: Clerks of Sessions

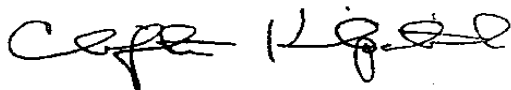
Dear Friends:

The 214th General Assembly (2002) of the Presbyterian Church (U.S.A.), in reliance upon God under the guidance of the Holy Spirit and in exercise of its responsibility to witness to the Lordship of Jesus Christ in every dimension of life, has approved this Resolution on Restorative Justice. It is presented for the guidance and edification of the whole Christian Church and the society to which it ministers; and will determine procedures and program for the Ministries Divisions and staff of the General Assembly. It is commended to the free Christian Conscience of all congregations and the members of the Presbyterian Church (U.S.A.) for prayerful study, dialogue, and action.

Drawing upon biblical sources, insights from the Reformed Tradition, and past policies of the General Assembly, this resolution affirms the continued use of restorative justice as the guiding metaphor for the work, program, and ministry of the church engaged with the criminal “justice” system. The resolution offers a simple definition of restorative justice as “addressing the hurts and the needs of the victim, the offender, and the community in such a way that all—victim, offender, and community—might be healed.”

The resolution comes to you and your congregation as both opportunity and challenge: an opportunity to seek new healing ways of interacting with the criminal justice system and a challenge to recognize and affirm the use of restorative justice approaches in our society. In delivering this resolution to you, it is my hope that we may all become more aware of our call to be God’s people in our daily lives and work.

Yours in Christ,

A handwritten signature in black ink, appearing to read "Clifton Kirkpatrick". The signature is written in a cursive, somewhat stylized font.

Clifton Kirkpatrick
Stated Clerk of the General Assembly

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Resolution on Restorative Justice

The 214th General Assembly (2002) approved this resolution (Item 12-04).
See *Minutes*, 2002, Part I, pp. 73, 576–95.

The 200th General Assembly (1988) of the Presbyterian Church (U.S.A.) adopted a statement on “Prison Violence and Nonviolent Alternatives” that reaffirmed the theology of previous General Assemblies in urging that “individual Presbyterians and the entities of the General Assembly . . . advocate a social order where compassion and justice characterize efforts toward those in the criminal justice system.” The statement went on to call for “changing a prison system that is based on the concept of punishment to one that encourages the restoration of the offender to the community and the development of alternatives to incarceration.” The statement expressed concern regarding the violent nature of prisons as institutions and expressed “the need to develop a nonpunitive philosophy that stresses the use of the least restrictive alternatives to imprisonment, including community-based corrections.”

In keeping with this and previous General Assembly actions¹, the Criminal Justice Program of the Presbyterian Church (U.S.A.) has become an articulate voice within a widespread movement that is best known as restorative justice. Restorative justice is sometimes called transforming or transformative justice, creative justice, relational justice, reparative justice, or healing justice. It is a fairly new term, but it is not a new idea. Christians find its roots in the Scriptures of the Old and New Testaments.

Restorative justice is a creative and constructive alternative to the widespread understanding of justice as retribution, with its emphasis on retaliation or punishment. Restorative justice is not oriented toward the imposition of penalties, or the exaction of revenge, or the infliction of pain, but toward the realization of the biblical visions of shalom and the kingdom of God. A simple definition of restorative justice is “addressing the hurts and the needs of the victim, the offender, and the community in such a way that all—victim, offender, and community—might be healed.”²

Restorative justice understands that there can be no satisfactory justice—no justice of God’s doing—without addressing the consequences of those behaviors that we call crime. For restorative justice, people really matter. There must be healing, a return to wholeness, a restoration of community, so far as possible—first of all, for those who have suffered because of the harmful actions of others, but also for those who have engaged in such actions. Without such restoration, the initial consequences of injurious actions continue to play themselves out, and continue to be suffered, both by the individuals immediately involved and by the communities of which they have been a part. Theologically speaking, without restorative justice, the laws of consequence and retribution reign. Restorative justice seeks the reign of God’s compassionate regard and transforming grace for all of God’s children.

In recognition and celebration of the Criminal Justice Program of the Presbyterian Church (U. S. A.) and its restorative justice ministry, we, the commissioners to the 214th General Assembly (2002) of the Presbyterian Church (U.S.A.):

1. Affirm the guiding principles and practices of restorative justice as a biblically faithful witness to God's justice and compassion for all people. The basic principles include the following:

- **Safety is the first consideration of the community. The first step toward restoration must be to protect those who have suffered and those who are at risk to suffer at the hands of others.**

- **The least drastic interventions, forms of coercion, and social control consistent with public safety are always to be preferred in dealing with offenders.**

- **The primary focus is on the harms of wrongdoing rather than the laws that have been broken.**

- **Concern and commitment must be shown both to victims and to offenders, involving both in the process of justice.**

- **Work toward the restoration of victims requires acknowledging their sense of violation, empowering them, and responding to their needs as they see them.**

- **Offenders must be held accountable for their actions, expected to take responsibility for their behavior, and called upon to change.**

- **Offenders should be expected to make restitution whenever possible, not as a matter of punishment but as an obligation and a means of helping to achieve restoration.**

- **The basic conflict or circumstance that led to the harm should be addressed and resolved whenever possible.**

- **Affected communities need to be involved in the restorative justice process. They have a stake in its outcome. Such involvement will also increase their capacity to recognize and respond more effectively to those conditions and practices within their community that contribute to crime.**

- **The availability of a continuum of service and treatment options in a variety of settings is necessary to provide alternatives to incarceration and other essentially punitive measures.**

- **The approach must encourage collaboration and reintegration rather than coercion and isolation. Participation in restorative justice programs by all parties must be voluntary. Victims must be willing and able to affirm the goals of restorative justice over those of retribution. Offenders must be provided the opportunity to participate in restorative justice programs as an alternative to punishment, not as an additionally imposed penalty. Restorative practices and programs must also be made available to incarcerated offenders. The community must be willing to exercise care and accountability, extending support to victims and acceptance of measures by which offenders may be restored to community life.**

2. Challenge all Presbyterians to learn to “do justice” in keeping with restorative justice insights and goals.

3. Encourage observance of Criminal Justice Sunday at all levels of the church, utilizing the excellent worship and teaching resources on restorative justice in the annual Program Guide distributed to all congregations by the Criminal Justice Program.

4. Call upon church sessions to promote the use of books, study guides, videos, and other resource materials that reflect a restorative justice perspective, including the “Justice Jottings” newsletter published by the Criminal Justice Program, in their churches’ educational programs;³ we further call upon church members to participate in such programs, and to seek out additional opportunities to gain experiential knowledge of the criminal justice system, e.g., by jail or prison visitation, attendance at court, volunteering at a local shelter for the domestically abused, etc.

5. Invite Presbyterians who have experience in restorative justice ministries to find creative ways to share their stories with their fellow church members and the larger church, to bear witness to the transformative possibilities of a justice that is compassionate and a compassion that is just; and we urge the Criminal Justice Program office to solicit such stories and to use any and all means at its disposal to publish them widely.

6. Encourage Presbyterians to find concrete ways to become involved in ministries of restorative justice, e.g., victim offender mediation programs, domestic violence and other victim assistance programs, community conflict resolution programs, community and family group conferencing, offender restitution, and restoration programs.

7. Encourage church members who have criminal acts committed against them to seek out the support and help of victims’ assistance programs as needed; and, where appropriate, to request legal redress through means that are restorative rather than retributive, that allow for mediation and alternative sentencing rather than incarceration, and that focus on accountability and restitution rather than on punishment.

8. Urge the involvement of Presbyterians who work within the criminal justice system—law enforcement personnel, probation officers, attorneys, judges, correctional officials, and others—as well as those who help make laws that determine what constitutes a legal offense or crime, to explore together with their pastors, church educators, and fellow church members ways in which to implement restorative justice practices in their local communities.

9. Urge the theological seminaries of the Presbyterian Church (U.S.A.) to include and promote within their curricula (a) coursework that introduces students preparing for ministry to the principles and goals of restorative justice, and (b) field education and Clinical Pastoral Education placements where students can engage in restorative justice ministries.

10. Urge the Criminal Justice Program office, the theological seminaries, and all church sessions and members who are involved in restorative justice ministries to become informed about “best practices” in restorative justice and to use them as guidelines for the continuing development and implementation of restorative justice ministries.

11. Call upon the General Assembly Council to recognize the growing acceptance and critical need for restorative justice approaches in our society, to support the current work of the Criminal Justice Program office, and to explore ways to expand the funding available to further develop and extend the restorative justice work and programs of that office.

12. Urge individuals, congregations, and governing bodies to support legislation that incorporates the principles of restorative justice at the state and federal levels, drawing upon the resources of the Criminal Justice Program and the Presbyterian Washington Office.

13. Call upon the Presbyterian Washington Office to advocate for the incorporation of restorative justice principles and practices in all relevant federal and state legislation.

14. Direct the Stated Clerk of the Presbyterian Church (U.S.A.) to send copies of this resolution with appendixes to the clerks of session of all the congregations of the church for prayer, study, and action.

Rationale

A. Background: Biblical Roots

For Christians, all our reflections about the ways in which we seek to order our lives together are set against the background of the biblical affirmation that every human being is created in the image of God [Gen. 1:26–27]. Every human being is therefore of intrinsic value or worth. Every human being is a child of God. Moreover, although we vary in our human endowments, we all stand as equals before God. As Moses declares to the Israelites in Deut. 10:17, “God is not partial,” and as Peter proclaims to the Caesareans in Acts 10:34, “God shows no partiality.” Our contemporary conceptions of equality and human rights are deeply indebted to biblical affirmations of the inherent worth of every human being as a person created in the divine image and due unmerited regard or respect.

It is also true, of course, that every human being is a sinner. “All have sinned and fall short of the glory of God” [Rom. 3:23]. Taken together, the affirmations that ALL bear the image of God and that ALL have sinned serve as crucial reminders that it would be a mistake to divide up the world into two kinds of people—those who are righteous and those who are not; those who are criminals and those who are not; those who have worth and those who do not; those who deserve to be punished and those who do not. One sees in the teachings of Jesus a clear subversion of the universal human tendency to divide up the world between “us” and “them.” In encounters with the religious and political authorities of his day who considered themselves to be good, upright “keepers of the law,” Jesus declares that his gospel is for sinners, not the righteous [Matt. 9:13; Mark 2:17; Luke 5:32].

In particular situations, with respect to specific actions and events, we can hardly avoid making judgments and drawing distinctions between those who have committed offenses called crimes and those against whom such offenses have been committed. However, we must avoid the temptation to characterize some people simply and indelibly as “criminals” and others as not. In fact, research suggests that over the course of our lifetimes, most of us will commit some crime and most of us will also have some crime committed against us.⁶ In any event, our feelings and our judgments against those who have committed even the worst of crimes must not be allowed to

obscure the fact that they are also fellow human beings, also created in God's image. The administration of justice toward those who have committed even the worst of crimes against humanity must take into account that they too are human. As Christians we must further affirm that they too are individuals for whom Jesus Christ has lived and died. Some criminals may seem to be beyond redemption, not to mention restoration. That judgment, however, must remain with God. Our reflections on restorative justice implicitly recognize that we are in no position to make final judgments about any of our fellow human beings.

Our theology of restorative justice must be clearly rooted in the biblical witness. Here it must be acknowledged that there is no single idea of justice in the scriptures of the Old and New Testaments. One reason for this is that the ancient Hebrews drew no sharp distinction between what we would call law and morality. Nor did they distinguish as we do between crime and sin. They did not draw clear distinctions between those obligations placed upon God's people that we would consider moral and those we would view as religious. Thus, one sometimes finds no separation between laws or commandments regarding ritual or religious practices and those regarding behavior toward others. Even the Ten Commandments, for example, include both commands pertaining to religious practice—Sabbath keeping, no making of graven images, no misuse of Yahweh's name—and commands regarding behavior toward others—honoring parents, no stealing, no adultery, no false witness, etc. Throughout the Old Testament, the pervasive if implicit view is that the person who is in right relationship with God must also be in right relationship with others, and the person who is in right relationship with others must also be in right relationship with God.

Thus, in the ancient biblical view, the just or righteous individual is precisely the individual who is in right relationship with God and with others. Righteousness in the Old Testament (OT)

is not behavior in accordance with an ethical, legal, psychological, religious, or spiritual norm . . . Rather, righteousness is in the OT the fulfilment of the demands of a relationship, whether that relationship be with [others] or with God. . . .

Generally, the righteous [person] in Israel was the [one] who preserved the peace and wholeness of the community, because it was he who fulfilled the demands of communal living. . . . Righteousness is the fulfilment of the communal demands, and righteous judgments are those which restore community. . . Thus the constant plea of the prophets is for righteousness in the gate, for a restoration of the foundations of the communal life.⁷

From one perspective, the language of law and commandment in the Old Testament is often regarded as evidence of legalism. Thus, the Old Testament's "God of law" is often contrasted with the New Testament's "God of grace." However, as biblical scholars are quick to point out, this is a caricature of Old Testament understandings of God and of law. This is not to say that there are no instances of retributive justice in the Old Testament, or that these scriptures have nothing to say about the administration of divine or human punishments. Nonetheless, the fundamental orientation of the Old Testament scriptures is not to demand conformance to moral or religious law. The fundamental orientation is to sustain—or where broken, to restore—the covenantal relationships and the covenantal bonds of the human community before God. God's "righteous judgments" are always oriented toward the salvation, the restoration, and the making whole of the covenanted community. In the Old Testament, God's righteousness "involves both justice and compassion as expressed in God's concern for the weak and vulnerable."⁸ "On the human side, righteousness meant life and behavior appropriate to the covenant and embraced all aspects of an Israelite's relations with God and [neighbor]. Its meaning thus ranged from right worship to care for the poor."⁹ God's people are therefore enjoined not only to BE

righteous or just, but to DO JUSTICE, as a matter of faithfulness to one another and to God.

To grasp fully the centrality of the biblical idea of restorative justice we need to see that it is integrally identified with the biblical vision of shalom. We need to see, further, that God's people are called to live toward that vision of shalom. The ancient prophet Micah is best remembered for his answer to the question of the true worship and service of God. Micah asks rhetorically: "With what shall I come before the LORD, and bow myself before God on high?" He then answers: "[God] has told you, O mortal what is good; and what does the LORD require of you but to do justice, and to love kindness, and to walk humbly with your God?" [6:6, 8] This is the essence of how to live toward that vision of God's shalom.

One of the most eloquent expressions of this vision is expressed in Psalm 72, a prayer for guidance and support of the ruler:

Give the king your justice, O God, and your righteousness to a king's son. May he judge your people with righteousness, and your poor with justice. May the mountains yield prosperity for the people, and the hills, in righteousness. May he defend the cause of the poor of the people, give deliverance to the needy, and crush the oppressor. . . In his days may righteousness flourish and peace abound, until the moon is no more. (Psalm 72:1-4, 8)

The justice that God calls forth from us, again, is not to be understood simply as a legal transaction nor a measured righting of a wrong. It is dynamic, creative, and transformative. In particular, it shows a special regard and concern for the weak, the disadvantaged, and the vulnerable, and its fruit is peace. "The effect of righteousness," says the prophet Isaiah, "will be peace" [Isa. 32:17; cf. 48:18; 57:2; 59:8; 60:17; Ps. 85:10; Zech. 8:16].

When we turn to the New Testament, this perception of how we are to live together justly in community is sharpened and even more clearly displayed. What is it that Jesus enjoins, above all, upon his disciples? "Strive first for the kingdom of God and its righteousness . . . [Matt.6:33]. The "kingdom of God," that is, God's dominion or realm or reign, entails a certain way of being and action, a way of righteousness, and a way of justice and compassion.

In the teachings of Jesus, the kingdom of God becomes the dominant metaphor to denote the world as envisioned by the Old Testament prophets. Jesus' vision of God's reign recalls and renews the Old Testament vision of shalom. Jesus' life and ministry incarnate this divinely authored commonwealth in which release is proclaimed to the captives, the oppressed are set free, and debtors are given a new lease on life [Luke 4:18]; the blind receive their sight, the lame walk, lepers are cleansed, the deaf hear, the dead are raised, and the poor have good news preached to them [Matt.11:5; Luke 7:22]. In a saying that harkens back to Micah, Jesus renders his own version of what God requires of God's people: Not simply the scrupulous keeping of the religious rituals, customs, and laws, but rather "justice and mercy and faith." These, according to Jesus, are "the weightier matters of the law" [Matt.23:23].

Moreover, in the teaching of Jesus there is a clear rejection of the law of retribution. One expression of this law is the familiar *lex talionis*, which calls for an eye for an eye, a tooth for a tooth [Leviticus 24:20]. Understood in its historical context, the *lex talionis* was probably formulated to place limits on vengeance, or blood revenge. It represented a mitigation of retaliation at a time when the members of an ancient tribe or clan might be inclined to inflict even greater injury upon an offending

individual or group than was inflicted upon one or more of their own. In effect, the lex talionis prescribed a limit to vengeance: do no more harm than was done to you!

Nonetheless, in one of the antitheses of the Sermon on the Mount, Jesus takes up and unambiguously rejects this formulation of justice. Traditionally, Jesus' words at this point have been translated, "Do not resist one who is evil" [Matt. 5:39; RSV]. Many contemporary translators point out, however, that this does not adequately capture Jesus' apparent meaning, and leaves his statement open to the charge of passive acceptance of evil and wrongdoing. A better translation would be "do not react violently [or, retaliate] against one who is evil."¹⁰ Jesus goes on to call for love of enemies, rather than hate. We are to pray even for those who persecute us, recognizing that God's grace and good will are not parceled out according to our sense of justice. Rather, God makes the sun to rise on the evil and the good, and waters the righteous and the unrighteous alike with rain [Matt. 5:38–48]. Clearly, divine justice bears little correspondence to human evaluations of merit. And we are to act accordingly, says Jesus [Matt. 5:48].

Three stories in the Gospels most vividly portray Jesus' understanding of the kind of justice that identifies God's reign among us. The first of these is commonly known as the parable of the Prodigal Son. The central figure of the parable and the real prodigal, however, is the father. By all rights, the father could have disowned his dissolute and rebellious son. The son, by the same token, when he comes to his senses, recognizes that he no longer has any right to the privileges of a son. He can only hope to be accepted and treated as a servant. But the father proves to be prodigal in forgiveness and love, and receives his lost son back into the fold. The elder brother rightly judges that his dissolute sibling has no right to such treatment, but wrongly resents the father's mercy and acceptance. The father, insisting that he has done his elder son no injustice, also insists that he will not be denied the joys of restoring the younger son to his place in the family again [Luke 15:11–32].

A similar message is proclaimed in Jesus' parable of the Laborers in the Vineyard. Some of the laborers put in a full day's work, while others show up late and put in as little as an hour. At the end of the day, however, each one gets paid the same. Those who have borne the heat of the day protest that they should get paid more, but the owner of the vineyard reminds them that they have received everything promised to them. The owner insists that he is within his rights to give those who showed up late a living wage as well. Clearly, the owner does not feel bound to hand out his payments according to what each laborer deserves. Rather, without cheating anyone, he gives to each what they need [Matt.20:1–15]. As in the previous parable, God's justice is not defined in terms of human merit. The waiting father does not punish, nor does the vineyard owner reward, according to what is deserved. In the parable of the Laborers in the Vineyard the basis for justice is need, in this case a day's pay, a living wage. In the parable of the Prodigal Father the basis for justice is restoration, bringing the dissolute son back into the family fold again as a son.

The third story is that of the woman taken in adultery, told in the Gospel of John [8:1–11]. Here again, Jesus refuses to acknowledge as a basis for justice what the woman deserves. Her guilt is not in question. The punishment prescribed by ancient law is not in contention or doubt. What is put into question is the right of anyone to condemn her, to put her to death. At no point does Jesus excuse her behavior. When he dismisses her, he tells her to sin no more. But we are left with the clear judgment that it would have been unjust for anyone to condemn her. True justice demanded her release and her return to the community from which she was taken. When we who constitute communities of Jesus' disciples encounter this story today, surely we are

called to receive back into our midst and to restore into our fellowship those who, like this woman, have violated the covenants of our life together.

When we turn to the writings of Paul we encounter a similar rejection of justice understood as retribution. If Jesus taught that we are to pray for those who persecute us, Paul says that we are to bless them [Rom.12:14]. He then goes on to say, “Do not repay anyone evil for evil, but take thought for what is noble in the sight of all” [Rom.12:17]. He commands the Christians at Rome never to avenge themselves, asserting that such prerogative belongs only to God.¹¹ And he concludes this striking passage by exhorting, “Do not be overcome by evil, but overcome evil with good” [Rom.12:21]. Such teaching is clearly in keeping with the spirit of Jesus’ call to widen the circle of our concern to include our enemies, and to love them rather than hate them. In addition, Paul’s teaching makes it unmistakably clear that we are not merely to countenance evil without taking revenge or exacting retribution. Rather, we are to take positive action to overcome evil, to diminish its effects, to alleviate its harm, to subvert its power, by doing good.

Neither Jesus nor Paul denies the reality of evil in the world. Neither denies that great suffering and harm result from such evil. On the one hand, there is great need to show love and compassion toward those who suffer. In Jesus’ parable of the Good Samaritan we see just how central is such compassion to the fulfillment of the great commandments, to love God and neighbor. However, what is most remarkable about Jesus’ proclamation of the gospel and Paul’s subsequent theological formulation of all that was revealed in the life, ministry, death, and resurrection of Jesus Christ, is the insistence that God does not deal with human evil and sin by seeking retribution or plotting the destruction of those who sin. To the contrary, God takes the initiative in trying to overcome evil with good. As Paul put it to the Romans, “While we were yet sinners Christ died for us” [Rom.5:8]. The Pauline doctrine of justification, so central to our understanding of the Christian faith, is premised upon this affirmation of God’s gracious solicitude toward us. It declares that God accepts us as just, as righteous, as set right in our relationships with God and others, quite apart from our deserving. Not that we are already just, or righteous, or in right relationship with God and all our neighbors, but that God so cherishes us and regards us that it may be so. This can only mean that God’s justice is oriented not toward retribution but rather toward “healing, reconciliation, the restoration of relationships.”¹² Paul clearly understands that on this account we no longer regard one another from the limited perspective of those who are subject to the law of measure for measure [cf. Matt. 7:1–2]. Now we regard one another from the transformed perspective of those who have been grasped by the law of love and grace. And it is on this basis that we have been given our ministry of reconciliation [cf. 2 Cor.5:16–21].

Whenever anyone is ordained to be a deacon, an elder, or a minister of Word and Sacrament in the Presbyterian Church (U.S.A.), he or she is called upon to answer in the affirmative the following question: “In your ministry will you try to show the love and justice of Jesus Christ?” In the biblical perspective it becomes evident that love and justice are understood to be so integrally related that one can hardly have the one without the other. The righteousness of God is, in effect, the love and justice of God. In Jesus Christ, God’s Righteous One [cf. Acts 3:14; 7:52; 2 Cor. 1:30], we see this love and justice incarnated in the world of human affairs. Restorative justice recognizes that there can be no justice without love. It also recognizes that love must be embodied in relationships and institutions that are just. Justice “is the form in which and through which love performs its work.”¹³ And, as affirmed in a statement adopted by the 184th General Assembly of the United Presbyterian Church in 1972, “the law of

love is the criterion for justice.”¹⁴ Thus we speak of a love that is just and a justice that is loving.

In 1978, the 118th General Assembly of the Presbyterian Church U. S. adopted a statement on “The Church and Criminal Justice” that also spoke directly from this insight:

Always, with all people, God is both loving *and* just, just *and* loving. God’s love *is* God’s justice, and God’s justice *is* God’s love. That God is the God of loving justice, and just love. And true human justice and true human love can only be a reflection of the unity of justice and love in God. . . .

Human justice that reflects God’s loving justice and just love . . . involves concern to correct social situations and institutions that cause or nurture the fear, sickness, helplessness, and despair which lead to anti-social behavior. It involves the concern to see that laws are not made or enforced to the disadvantage of the poor and powerless and to the advantage of the rich and powerful. In short, it means criticizing and correcting every political or legal structure or practice in which equal justice for all really means that some are more equal and have a better chance than others.

Thus, restorative justice exhibits a concern for the welfare of the whole of society, recognizing that what we call criminal behavior is never simply a matter of individual acts of violation but also invariably a reflection of basic social values, structures, and systems of inequality.

In sum, in the Old Testament, a world of loving justice and just love is envisioned in terms of shalom. In the New Testament, the dominant metaphor to express this vision is the kingdom of God. We are called to live toward this vision by practicing a restorative justice that focuses on addressing the harm, suffering, violence, exploitation, and degradation of human beings that result from violations of a community’s legal or moral norms as well as other means by which life in community is jeopardized, relationships are broken, people are divided, and there is need for restoration.

B. *Current Societal Realities in the Light of Restorative Justice*

“Let us begin with a fundamental realization,” writes Richard Quinney at the beginning of his book, *Criminology As Peacemaking*, co-edited with Harold L. Pepinsky:

No amount of thinking and no amount of public policy have brought us closer to understanding and solving the problem of crime. The more we have reacted to crime, the farther we have removed ourselves from any understanding and any reduction of the problem. In recent years, we have floundered desperately in reformulating the law, punishing the offender, and quantifying our knowledge. Yet this country remains one of the most crime-ridden nations. In spite of all its wealth, economic development, and scientific advances, this country has one of the worst crime records in the world.¹⁵

Although restorative justice is not limited in its concern to the workings of the “criminal justice system,” that is usually the point at which it begins to identify the larger social problems and practices that must be addressed in order for restorative justice principles and practices to be implemented. Restorative justice commends itself, first of all, as a biblically faithful alternative to a retributive, punitive criminal justice system. In fact, it is only with significant qualification that we may even speak of the “criminal *justice* system.” In far too many respects this system is unjust.

In the first place, research suggests that, nationally, “only about 3 percent of all serious crimes result in a sentence of imprisonment. This is not because of overly lenient judges, but due to the inherent limitations of the reactive system itself.”¹⁶ Most crimes either are never reported or do not result in an arrest. Yet it is widely believed that punishment of criminals, especially by incarceration, is a primary factor in the

deterrence of criminal behavior. On the other hand, there are now some two million people in U.S. prisons and jails. This is the highest rate of incarceration in the industrialized world, recently surpassing even that of Russia.¹⁷ If the prospect of incarceration were an effective deterrent to crime, one might expect the crime rate in the United States to be among the lowest in the world. Moreover, if capital punishment were an effective deterrent against capital crimes, one would expect the murder rate in the United States to be among the lowest in the industrialized world, and lower in those U. S. states that practice capital punishment than in those that do not. None of these expectations is borne out by the facts.¹⁸

The following circumstances are telling: Of those in our federal prisons, nearly two-thirds have been convicted on drug-related charges. As many as 80 percent are in need of treatment for substance abuse, but fewer than half of our jails and prisons provide drug treatment. Drugs are often easier to obtain in prison than on the street. Over 45 percent of the inmates in our nation's prisons are African Americans, most between the ages of 18–34.¹⁹ The percentages are often higher in county jails. A 1995 report documented that at any given time nearly one in three young black men in the age group 20–29 is under some form of criminal justice supervision—either in prison or jail, or on probation or parole.²⁰ Increasing numbers of those in prisons and jails are Hispanic. Many are non-citizens. Incarceration rates for adult females, most of whom are African American or Latina, have quintupled in the past two decades. There are increasing numbers of youth, as prosecutors succumb to public pressure to try juveniles as adults.²¹ In the twelve years from 1985–1997, the number of offenders under age 18 in state prisons more than doubled. The likelihood that a youth under age 18 arrested for a violent offense would be sentenced to prison also almost doubled during this period. Some 60 percent of youth in state prisons are African American.

Many of those in our prisons and jails are mentally ill, an estimated 284,000 in 1999. In a 1996 survey, over one-third of jail inmates reported some physical or mental disability. Our prisons and jails have become dumping grounds for people our society does not wish to deal with in other ways. At the same time that prison building has become a growth industry, educational and rehabilitative services in prisons have been cut back or eliminated altogether. The money is there to lock them up but not to try to help them become human beings who can function effectively and safely in a “free” society. The Department of Housing and Urban Development estimates that it costs over \$40,000 a year to keep someone in jail in New York City, while \$12,500 would provide affordable housing plus food and support services to a homeless American.²² There is also a trend toward privatization of prisons, an economic proposition only so long as there is a dependable supply of prisoners. Recognizing the inherent conflict of interest between the economic imperatives of private for-profit institutions and the long-term interests both of prisoners and society, the 211th General Assembly (1999) of the Presbyterian Church (U.S.A.) approved a policy opposing prison privatization.

The dramatic increase in the rate of incarceration of adults in American society has also been accompanied by a serious erosion of juvenile justice programs.

The juvenile justice system in the United States was introduced a hundred years ago, in an attempt to emphasize individualized treatment and rehabilitation, while shielding young people from rampant abuses in the adult prison system. Over the past decade, punishment, retribution, and incarceration have once again become society's prescription for trouble youth. Since 1993, forty-three states have changed their laws to make it easier to send youth into the adult criminal justice system.²³

As with the adult population in jails and prisons, these youth are disproportionately from minority groups. The overwhelming majority has committed nonviolent offenses, mostly property crimes. They are much less likely than adults to receive due process, including legal representation, in juvenile courts. In jail or prison, they are especially vulnerable targets for all kinds of abuse, including physical and sexual abuse, from other prisoners, guards, and staff. Youth incarcerated with adults are eight times more likely to commit suicide than youth in juvenile facilities, and they have a much higher rate of re-arrest.²⁴

In 2000, the prison population in the United States rose for the twenty-eighth consecutive year. In mid-2000, one in every 142 U.S. residents—including approximately one out of every 76 men—was in jail or prison. At current incarceration rates, one in every twenty persons can be expected to serve time in prison during their lifetime. For African American men and women, the figure is one in six. Newborn black males have a greater than one-in-four chance of going to prison during their lifetime. There are now four times as many adults in our nation's jails and prisons as there were just two decades ago.

Meanwhile, crime rates for serious offenses are now reported to be at their lowest levels since 1978.²⁵ How can this anomaly be explained? Is it that incarceration has proven effective as a deterrent, after all? The evidence suggests otherwise. Three important factors would seem to be most responsible. On the one hand, the period in question was marked by unprecedented economic prosperity. Even though the benefits of this prosperity fell disproportionately to those with higher incomes, in 2000 the unemployment rate reached its lowest point in over thirty years.²⁶ Secondly, the general ageing of the U. S. population means that there are now proportionately fewer males between the ages of 15–30, the demographic group most likely to commit offenses. These two facts, when combined with increased funding of crime prevention, including larger numbers of law enforcement personnel, have probably been most significant in reducing the rate of felony crimes.

On the other hand, the two major sources for measuring crime rates, the FBI Uniform Crime Reports and the National Crime Victimization Survey, only include crimes for which there is an identifiable victim other than the offender him/herself. Thus, most drug offenses (as well as prostitution and gambling), are not included in either measure. Increasingly longer sentences, combined with the enormous increase in arrests and incarcerations for drug-related crimes, would seem to account for most of the burgeoning population in the nation's jails and prisons.²⁷ Another possible contributing factor is mandatory sentencing laws, e.g., “three-strikes-and-you're-out.” The dramatic rise in the numbers of incarcerated persons in the United States has little to do with the amount of crime being committed. Rather, it reflects increasingly punitive attitudes toward persons identified as criminals, most of whom are poor people of color.

The 212th General Assembly (2000) of the Presbyterian Church (U. S. A.) called for a “Moratorium on Capital Punishment.” The primary rationale was the “strong evidence that the death penalty is applied in a racist manner.” The tragic reality is that a pervasive racism in our society is reflected at every level of the criminal “justice” system, not just on death row. The grossly disproportionate numbers of African Americans in our nation's prisons and jails provide the most obvious but hardly the only evidence that there is little that is just about the way in which punishment and incarceration are being used by our society as means of social control. One especially grievous example: sentences imposed on persons arrested for using crack cocaine, who are mainly African Americans, are up to a hundred times more severe than

sentences imposed on those arrested for using powder cocaine, who are mainly whites.²⁸ Those who end up in U.S. jails and prisons are disproportionately people of color, poor, young, male, inner-city, non-citizen, mentally ill, and disabled. Our jails and prisons have become warehouses for the unwanted, the socially marginalized, and the powerless. This is not to say that the incarcerated are innocent of the crimes for which they have been convicted. They have been “criminalized” to such an extent, however, that it is clear there must be other major social dynamics at work.

The criminalization practices in our society are a manifestation of societal scapegoating, of which race, social class, and social deviancy are major dimensions:

Persons who become known and labeled “criminals” are but a small, biased sample of society. According to research studies, most persons in the general population have committed offenses, a substantial portion so serious that they could have resulted in prison terms had they been apprehended, arrested, and convicted. Unapprehended, however, they are not known as “criminals.”²⁹

In fact, the process of criminalization can hardly be understood without the recognition that many harmful and socially costly acts are never even treated as crime. The harmful behaviors of the poor and socially disadvantaged are far more likely to be legislated against and thus defined as crime than are the harmful behaviors of the socially privileged. Thus the very determination of what constitutes crime is already biased, because “most of the dangerous acts of the well-to-do have been excluded from the definition of crime itself.”³⁰ The process of criminalization continues to disadvantage the poor at every subsequent stage of the criminal justice process: “For the same criminal behavior, the poor are more likely to be arrested; if arrested, they are more likely to be charged; if charged, more likely to be convicted; if convicted, more likely to be sentenced to prison; and if sentenced, more likely to be given longer prison terms than members of the middle and upper classes.”³¹ The vast majority of those who become identified as criminals and end up in our nation’s jails and prisons constitute an unrepresentative segment of our society whose disadvantageous circumstances are exploited and further compounded by our criminal justice system at the same time that many of the dangerous and harmful actions of the socially privileged escape legal sanction. The implicit assumption of most citizens that our retributive criminal justice system provides for the imposition of criminal penalties and punishments that correlate closely with degree of harm done must be thoroughly challenged.

The 184th General Assembly (1972) of the United Presbyterian Church called for “the abolition of prisons as they now exist,” an action that was reaffirmed by the 200th General Assembly (1988) of the Presbyterian Church (U.S.A.). Since then, the situation has only become worse. Our nation’s prison system is a classic example of the failure of good intentions. At the turn of the nineteenth century, the Quakers had become leading proponents of incarceration as a more humane method of dealing with offenders than the physical punishments and public humiliations to which offenders were commonly subjected at the time. The goal was rehabilitation, and it was thought that a period of detention would allow the prisoner to reflect upon the error of his or her ways as a necessary step toward penitence and reform. Hence prisons came to be called penitentiaries. Imprisonment came to be justified as a means to rehabilitation. The failure of imprisonment to accomplish rehabilitation, however, has now resulted in a new justification—retribution. People are sent to jail, it is supposed, because they deserve to be punished. They must be given their “just desserts.” They must “pay their debt” to society. Justice demands the exaction of such a penalty—the more serious the crime, the more serious the penalty and longer the period of imprisonment.

However, as we have just seen, there is little that is just about the way in which penalties of imprisonment are actually imposed. This is widely known to be the case with respect to capital punishment,³² but it is no less the case for imprisonment in general. Moreover, imprisonment has done little to reduce crime or increase public safety. What happens in prison is that offenders “serve time.” Prisons, in fact, often function as schools for crime. This year some 600,000 persons who were convicted of crimes will leave the nation’s jails and prisons and rejoin society. Two-thirds of them will be rearrested within three years.³³ Finally, the realities of life in prison are such that imprisonment serves not only as punishment but also for punishment. Not only are people locked up in prison, they are then subjected to an environment permeated with individual and institutional violence. In addition to the dehumanizing, degrading features of institutionalized confinement, many prisoners themselves become victims of rape, extortion, theft, and physical assault. Given that most offenders in our jails and prisons have been convicted of nonviolent offenses, the punishment resulting from their incarceration often exceeds even the bounds of retribution. As the 184th General Assembly (1972) of the United Presbyterian Church declared already:

In the light of human reason, human decency, and human dignity prisons stand as a tragic reflection of failure of society and ourselves to achieve community. Ironically, they victimize not only the keepers and kept alike, but society as well. Lamentably, prisons and jails survive and thrive because of an adherence to the alleged value of punishment which precludes a rational system of individual and community protection.³⁴

Despite the overwhelming failures of our prison system, spending on prisons in the United States grew from \$7 billion in 1980 to \$45 billion in 2000—and there is still an oversupply of prisoners.³⁵ This would suggest, again, that there are forces at work in our criminal justice system that have little to do with the creation of a society that is safer, more just, more humane, and more whole. It is as if our society believes it can solve the problem of crime by banishing all offenders from our midst, though of course we succeed in banishing few but the most underprivileged, powerless, and disadvantaged, and most of these only temporarily. The inequities and irrationalities of our incarceration practices reflect the extent to which the desire to punish is driven by fear, anger, and the spirit of revenge. It seems unlikely that the general public can be persuaded to act more equitably, more rationally, or more humanely without addressing the deep reservoir of negative feelings that motivate so much public discourse about crime.

This raises the question of whether restorative justice has anything to say about, and to, those who are victims of crime. In comparison to retributive justice, restorative justice commends itself as an approach to justice that takes more fully into account the actual harm done to and experienced by victims, whose needs it seeks to address. In our present system, crime is understood first of all as an offense against the state. Criminal cases, for example, are designated in such terms: State of _____ vs. _____. Legal cases are defined and conducted within an adversarial framework that discourages admission of guilt and sets up a win-lose contest between plaintiff and defender. Typically, the criminal justice system is interested in the victims of crime chiefly for their evidence or testimony, not with alleviating the actual injury, loss, or trauma they have suffered. The aim of criminal proceedings, from the state’s perspective, is to secure a conviction, or to force a plea bargain, in order to dispose of the case. What happens to the victim often remains incidental to the aims of the system.

Consequently, victims often report that the conviction of an offender does little to remedy the distress caused by the offense. In many cases a victim has no opportunity to discover the motivations of the offender, and therefore no way to give meaning to, or

make sense of, the act that she or he has suffered. Was there some reason the offender singled the victim out? Or was it a random act? Is the offense part of a pattern? Is the offender likely to commit the same offense against the same victim again? In an adversarial judicial system, where offenders are encouraged to deny culpability and prosecutors downplay mitigating circumstances, victims have few resources to interpret the significance of the injuries done to them and offenders have incentives not to admit to anything for which they could be held accountable.

A major study a few years ago by the National Criminal Justice Commission confirms this general picture. The commission concluded, in part, that “crime victims are often revictimized by the justice process. They are sometimes shuffled around by the bureaucracy, questioned insensitively by police, subpoenaed by courts, mystified by procedures needed to get restitution, kept ignorant of important court dates, and denied possession of their own property being held as evidence.”³⁶

Further testament to the inadequacies of the current system is the so-called victims’ rights movement. Because victims have often felt that their feelings and injuries have been inadequately addressed by prevailing criminal justice practices, many are now demanding a greater say in judicial and sentencing procedures. The victims’ rights movement and the restorative justice movement share the concern to be responsive to the felt needs of victims. Insofar as the victims’ rights movement is fueled by a desire for greater retribution or revenge, however, its goals are directly at odds with the goals of restorative justice. It would be unfortunate if the energies this movement concentrates on securing a greater voice for victims in the criminal justice system simply add to the impetus toward harsher punishments. It remains to be shown, moreover, whether the imposition of harsher penalties contributes in any positive way to the resolution of the distress and hurt that are common to most victims. On the other hand, restorative justice programs have been involving victims in creative and constructive resolution of criminal cases for many years with positive outcomes for participating victims.³⁷

The many restorative justice success stories have been corroborated by several research studies. One of these, a large multi-site study of victim-offender mediation programs with juvenile offenders found the following: (1) in cases referred to the four study-site programs during a two-year period, 95 percent of mediation sessions resulted in a successfully negotiated restitution agreement to restore the victim’s financial losses; (2) victims who met with offenders in the presence of a trained mediator were more likely to be satisfied with the justice system than were similar victims who went through the standard court process (79 percent vs. 57 percent); (3) after meeting offenders, victims were significantly less fearful of being re-victimized; (4) offenders who met with victims were far more likely to complete their restitution obligation successfully than were similar offenders who did not participate in mediation (81 percent vs. 58 percent); and (5) recidivism rates were lower among offenders who participated in mediation than among offenders who did not (18 percent vs. 27 percent); moreover, participating offenders’ subsequent crimes tended to be less serious.³⁸

When we think about victims and the injuries they suffer due to criminal behavior, we think first of all those who have had crimes committed directly against them. There are many others, however, whose lives are also diminished by crime. In a statement on “The Church and the Victims of Crimes,” the 120th General Assembly of the Presbyterian Church U. S. identified the following as victims:

Persons whose bodies are assaulted, violated, and murdered, and their families or survivors;

Those who are intimidated, harassed, and coerced;

People whose property is damaged or stolen;

People whose lives are disrupted by criminal behavior of community or family members;

Consumers who pay higher prices because of “white collar” offenses, employee theft, or greed and mismanagement by businesses and corporations;

Taxpayers whose money supports a cumbersome and often ineffectual system of justice and imprisonment.³⁹

This list is suggestive, not exhaustive. It reminds us that crime tears at the social fabric and its consequences ripple through the whole of society. It should also remind us that crime is pervasive and that no part of society can insulate and isolate itself either from crime or its effects. Among those who suffer most on account of the harmful actions of others are two categories of victims that merit special mention.

One category is the estimated ten million children in the United States who have experienced the incarceration of a parent. Nearly half of the incarcerated parents are African American; another 20 percent are Hispanic. Black children are nine times as likely, and Hispanic children are three times as likely, to have a parent in prison as white children. There are now over 1.5 million children with one or both parents in prison. The implications of this are very troubling:

Studies show that children of parents in prison, most already suffering from the effects of high poverty rates, substance abuse by their parents, as well as neglect and abuse by their parent or others, are at greater risk than other children of almost every bad experience imaginable: depression, acting out, poor academic performance, early pregnancy, substance abuse, post-traumatic stress disorder, shame, self-loathing, survivor guilt, flashbacks, and problems with sleep and concentration. Here again, the prison industry guarantees future business for itself.⁴⁰

In addition to the injustices and irrationality of current imprisonment practices with respect to those who are incarcerated, add the injustices and horrendously undesirable consequences that bear down upon their children who, in this context, must be regarded as innocent victims.

A second and similarly innocent category of victims is women, children, and men who are victims of what is called domestic violence. There is nothing very “domestic” about such violence, of course. From verbal abuse to physical assault, from rape and incest to murder, such violence generates fear, pain, and terror in untold numbers of human beings. Most domestic violence never gets reported, so we can only guess at the magnitude of this problem. Consider the following comparison, however: During the Vietnam War some 58,000 servicemen were killed, their names now inscribed on the wall of the Vietnam Memorial in Washington, D. C. During the same period, some 54,000 women were murdered in acts of domestic violence.⁴¹ To most of us they remain completely anonymous, the stories of their lives perhaps never to be told.

A good bit is known, however, about what it is like to be a surviving victim of domestic violence. The need for survivor victims to be protected, heard, believed, respected, supported, and helped has been identified and affirmed by the General Assembly of the Presbyterian Church (U. S. A.) in its adoption of a “Domestic Violence” policy in 2000.⁴² The realities of domestic violence highlight in a dramatic way some of the major challenges for a theology and practice of restorative justice. An emphasis upon restoration of relationships in a domestic situation without due attention to safety, protection, accountability, and effective treatment or rehabilitation can be deadly. Women (or men) who have been seriously abused by their spouses or domestic partners can hardly be expected to extend forgiveness and seek reconciliation without substantial assurances and evidence that they are not likely to become victims again.

Indeed, the emotional scars of domestic violence and sexual abuse are often so deep that it is not possible to achieve a full recovery, or a full restoration of relationships, to the state before the violence or abuse occurred. In such cases restorative justice aims, first of all, to provide the necessary safety, protection, and support that survivor victims need to be able to move beyond their trauma and fears. Then restorative justice aims to accomplish as much healing as possible, e.g., to restore whatever relationships can be restored and/or to help the survivor victims to regain sufficient sense of wholeness to be able to engage in meaningfully close relationships in the future.

At the same time, restorative justice insists upon holding the perpetrators of domestic violence and abuse accountable for their actions. Restorative justice always maintains that those who have violated others, whether through criminal actions or by means of other behaviors that harm individuals and impair relationships, must take responsibility for their actions and become subject to some process of personal transformation for restoration to be achieved.

Restorative justice commends itself, thirdly, as a way of thinking that provides a critique of social structures and systems whose consequences are harmful whether or not they result from illegal practices. Retributive justice is focused on violations of law. When laws are broken, it wants to know what happened, who did it, and what punishment is deserved? Relatively little attention is given to repairing the damage that has been done. Nor does retributive justice concern itself with legal manifestations of harm and violence. Restorative justice recognizes that harm and violence can be done even when laws are not broken. In a restorative justice perspective, as we have already seen, the institutionalization of racial and class prejudices in systemic structures of violence cannot be ignored. Domestic violence was a concern well before the law recognized that rape and other forms of unacceptable violence among intimates were crimes. Restorative justice remains concerned that still other forms of abuse that would be illegal if committed against strangers continue to take place without legal censure within “domestic” situations.

Unfortunately, there are still many other ways in which harm can be done to others that are “perfectly” legal. For decades major cigarette companies denied the validity of scientific research documenting the harmful effects of smoking, and still they are free to promote their products to a vulnerable public. Employers offer more part-time jobs and fewer full-time jobs to unskilled employees in order to avoid providing health care and other benefits. Corporate executives award themselves huge salaries and even larger bonuses while laying off thousands of hourly employees, blaming declining markets and revenues. Politicians reward major party benefactors with government contracts, corporate subsidies and income tax breaks that redistribute wealth and social power toward even greater disparity.

Restorative justice is not a panacea for all our social ills. However, because it focuses on harm and need, not just on assigning guilt and fixing blame, it offers a critical lens through which to see what is going on in society that offends the sense of justice. Because it focuses on relationships, not just legal infractions, it recognizes violations of equality, justice, and love that constitute abuses of power, that diminish prospects for life, and that fracture and destroy the bonds of community.

Finally, restorative justice commends itself as a way of thinking substantively and acting concretely in order to begin to embody the biblical vision of shalom, or the kingdom of God, as a realm of justice, love, and peace for all of God’s children. Many restorative justice practices have already been tried and found effective in bringing

about a transformation in the lives of victims, offenders, and the communities of which they are a part. Victim Offender Mediation Programs, community conflict resolution programs, victim assistance programs, and family conferencing programs are prime examples. Restorative justice is not a particular program or cluster of programs, however. It is a way of thinking about the demands of justice and a way of working with victims, offenders, and communities to achieve the goal of repairing harm, restoring relationships, healing individuals and society so far as possible. It owes much of its support to people whose experiences working within the criminal justice system have convinced them of the need to change the way we deal with the events we call crime and with the people we call offenders and victims. Reflection upon those experiences in the light of the biblical vision of justice has led to a number of widely accepted principles that have come to define the restorative justice approach.

C. Restorative Justice Principles

As noted previously, a simple definition of restorative justice is “addressing the hurts and the needs of the victim, the offender, and the community in such a way that all—victim, offender, and community—might be healed.”⁴³ Basic principles include:

1. Safety is the first consideration of the community. The first step toward restoration must be to protect those who have suffered and those who are at risk to suffer at the hands of others.

2. The least drastic interventions, forms of coercion, and social control consistent with public safety are always to be preferred in dealing with offenders.

3. The primary focus is on the harms of wrongdoing rather than the laws that have been broken.

4. Concern and commitment must be shown both to victims and to offenders, involving both in the process of justice.

5. Work toward the restoration of victims requires acknowledging their sense of violation, empowering them, and responding to their needs as they see them.

6. Offenders must be held accountable for their actions, expected to take responsibility for their behavior, and called upon to change.

7. Offenders should be expected to make restitution whenever possible, not as a matter of punishment but as an obligation and a means of helping to achieve restoration.

8. The basic conflict or circumstance that led to the harm should be addressed and resolved whenever possible.

9. Affected communities need to be involved in the restorative justice process. They have a stake in its outcome. Such involvement will also increase their capacity to recognize and respond more effectively to those conditions and practices within their community that contribute to crime.

10. The availability of a continuum of service and treatment options in a variety of settings is necessary to provide alternatives to incarceration and other essentially punitive measures.

11. The approach must encourage collaboration and reintegration rather than coercion and isolation. Participation in restorative justice programs by all parties must be voluntary. Victims must be willing and able to affirm the goals of restorative justice over those of retribution. Offenders must be provided the opportunity to participate in restorative justice programs as an alternative to punishment, not as an additionally imposed penalty. Restorative practices and programs must also be made available to

incarcerated offenders. The community must be willing to exercise care and accountability, extending support to victims and acceptance of measures by which offenders may be restored to community life.

As affirmed by the 118th General Assembly of the Presbyterian Church U. S.:

Human justice that reflects divine justice will attempt specifically to “rehabilitate” or “reintegrate” social offenders in such a way that they are enabled to live freely and responsibly in a community with other people. . . . It means the rejection of all procedures that expect people to become free and responsible while at the same time denying every possibility of exercising freedom and responsibility. It means devising procedures that with patience, helpful supervision, discipline, and due precaution encourage and enable people to *practice*—learn by *doing*—freedom and responsibility.⁴⁴

Restorative justice recognizes the need, first of all, for victims and potential victims to be protected. Therefore, it accepts the limited necessity for coercive forms of restraint, including incarceration, for some offenses. The primary purpose of incarceration, however, must be to protect victims and society, not to punish offenders. From a restorative justice perspective, punishment is not viewed primarily as an abstract notion regarding what seems to be required to restore the balance of justice. Rather, punishment is recognized to involve the deliberate infliction of pain—physical, mental, emotional, or psychological—on a human being.⁴⁵

Strong arguments have been made on behalf of punishment. These arguments, however, focus on past behaviors, and address society’s conventional sense of justice. Restorative justice regards it as equally important to focus on future behaviors, and calls for a transformation in society’s sense of justice. Restorative justice believes that the deliberate infliction of pain may only compound whatever injury already has been done. Too often punishment fuels the anger and resentment of the punished, contributing to the perpetuation of the cycle of violence. Restorative justice calls for a profound shift in perspective, away from punishment toward accountability and restitution, away from vengeance and retribution toward healing, restoration, and forgiveness.

D. *Hard Cases for Restorative Justice*

1. *Capital Punishment*

There are certain crimes that arouse such public indignation, and that seem to place the offender so far beyond restoration, that they may call into question the whole idea of restorative justice. The most visible such crimes today are those for which the death penalty has been imposed. Under recent Supreme Court rulings, the only crime punishable by death today in the United States is murder. There are multiple reasons for opposing capital punishment as it is currently administered in the United States, however. There are few places where the institutionalized racism of our society is more evident than on death row. Persons of questionable moral competence—e.g., mentally retarded persons and persons who committed crimes as minors—have become subject to the death penalty. The typical costs of prosecuting a capital crime to its conclusion in the execution of a convicted prisoner far exceed those of incarcerating that prisoner for life. Finally, there is increasing evidence that a significant number of people have been wrongfully convicted and sentenced to death, most notably in the state of Illinois, and there is no reason to regard Illinois as unique in this regard.⁴⁶

Even if these glaring shortcomings of the criminal justice system could be corrected, however, restorative justice would insist that capital punishment is wrong. It is wrong because it is not necessary to protect society. Anyone from whom society needs protection can be imprisoned for as long as that person poses a threat to others.

It is also wrong, furthermore, because it is impossible to know that a person who has murdered can never be redeemed or restored. As a matter of faith and faithfulness, this possibility must be left open for every human being. Finally, it is wrong because, as noted above, the only way to properly honor God's gift of life is to refuse to deprive anyone of the life that God has given them.

The Presbyterian Church (U.S.A.) and its predecessor bodies have long been opposed to capital punishment. The reasons for this are often misunderstood. Proponents of capital punishment argue that those who have taken life deserve to die. They further argue that the only way to express adequately the moral seriousness of this crime is to take from those who commit it what is most precious. Anything less is seen to diminish the magnitude of the crime.

Opposition to capital punishment does not reflect the judgment that murderers do not deserve to die. It reflects the conviction that it is not our human prerogative to render such judgment, nor is it our place to take human life. God is the sovereign of life, and all life belongs to God. Fallible, sinful human beings have no right to condemn anyone to death. This is also to say, of course, that those who have committed murder have committed a terrible violation. For restorative justice the proper way to express the value of life is by refusing to take it, even when taking it would seem to be more than justified. The question is not, what does the murderer deserve? The question is, how can we as a people be faithful to God's gift of life? Just as God did not demand the life of Cain in recompense for the life of Abel, so we have no right to demand such life. And, as most recently affirmed by the 197th General Assembly of the Presbyterian Church (U. S. A.), "capital punishment cannot be condoned by an interpretation of the Bible based upon the revelation of God's love in Jesus Christ."⁴⁷

2. *Hate Crimes*

Hate crimes are crimes that are motivated at least in part by hatred toward the members of a status category, e.g., race, gender, ethnicity, religion, sexual orientation, national origin, to which the victim is perceived to belong. The hate is usually evident in what the offender says in conjunction with the crime about the victim or the status category to which the victim belongs. Hate crimes add criminal injury to prejudicial hate. A restorative justice perspective recognizes that the harm of such crimes is hardly limited to the injury inflicted by the crime itself. The harm is rooted in the prejudice and hatred with which the offender regards the victim and all those who, like the victim, are members of whatever group it is the offender despises.

A restorative justice response to hate crimes must include concern and support for the victim as a person who is subject to the taunts, insults, threats, and potential violence of those who harbor prejudicial hate. More generally, restorative justice regards all expressions of prejudice not simply as individual behaviors but as manifestations of socially institutionalized attitudes and values. Hate crimes are violations of human equality and dignity against entire groups of people that must be addressed through measures that call for change both in hateful individuals and in the systemic structures that perpetuate prejudicial attitudes and practices.

Appropriate legal responses to hate crimes include the commitment of resources within law enforcement communities to the close monitoring and reporting of hate-based crimes, as well as legislation to correct discriminatory practices that institutionalize prejudice. Resources of governments as well as private citizens and organizations must be devoted to education, positive socialization, and moral suasion

to overcome all forms of prejudicial hate. The imposition of “enhanced penalties” for violent hate crimes, however, bear careful scrutiny.

Many civil libertarians maintain that the enhanced penalty provisions of most hate crimes legislation are, or should be, unconstitutional. They point out that hate speech, however odious, is constitutionally protected by the Bill of Rights. People should be held legally accountable for their actions, but not necessarily for their words. Restorative justice, on the other hand, maintains that people must also be held accountable for their hateful speech. Words can inflict real injury, pain, and suffering. However, restorative justice also maintains that “enhanced penalties” are a punitive, retributive approach to justice, not a restorative one.

In practice, “enhanced penalties” almost always amount to longer or harsher sentences. In the first place, greater punishment does not increase the likelihood that offenders will experience a change of heart toward persons who belong to the group they hate. Nor are longer sentences likely to result in safer streets.⁴⁸ Moreover, there is strong reason to believe that those who are most likely to become subject to such penalties are not the chief offenders:

In the real world of the U. S. criminal justice system . . . whenever penalty enhancements have been enacted to underline the seriousness of certain types of offenses, they are not applied against those responsible for causing the greatest harm. Instead, they are overwhelmingly applied to defendants with the fewest resources: the least access to counsel, the least sophistication about the system, and, not coincidentally, the least social status (that is, the least human value) in the eyes of prosecutors, judges, and juries. In other words, poor people, people of color, and youth.⁴⁹

Finally, the ready resort to “enhanced penalties” for hate crimes conceals a subtle resistance to the more difficult tasks of trying to change the social, economic, and other life conditions that aid and abet both prejudicial attitudes and criminal behavior. People who have been thwarted in life, and especially those who are socially or economically disadvantaged, tend to locate blame for their circumstances with, and direct their hatred toward, some identifiable racial, ethnic, or other social group. Ironically, “enhanced penalties” for hate crimes may be a form of reverse scapegoating, a means by which most members of society may divert attention from their own widespread and pervasive patterns of institutionalized prejudice and discrimination to place the blame on an already disadvantaged segment of society. And even if many hate crimes are committed by persons who are themselves in no obvious way disadvantaged, it must be noted,

Hate crimes are committed by specific individuals, but they target those within a community who are seen as expendable or unworthy. In this sense, not only the individual who commits an act of violence but the entire community is implicated in hate violence—and so the community must also help to heal it.⁵⁰

Communities must assume a significant measure of responsibility for hate crimes. They must also hold themselves accountable for attitudes and practices of prejudicial hate. “Enhanced penalties” should not be used to displace the blame for hate crimes entirely on the identified perpetrators.

3. Other Harmful and Legally Proscribed Behaviors

As already noted, various forms of domestic violence place special burdens and obligations upon restorative justice. The challenges of dealing with domestic violence are not unique to restorative justice, however. Our traditional retributive justice system has notoriously failed to address the needs of victims and to provide the necessary protections often called for in the face of realistic threats of domestic

violence. Victims, or potential victims, of domestic violence require and deserve special protection. Because of its focus on harm, not just legal violation, restorative justice is quicker to recognize and respond to such threats as real harms in themselves. The necessity to find ways to deal with actual and potential offenders and to help them move beyond their anger and need for control remains a continuing challenge.

Sexual predation is another form of behavior, found within as well as outside domestic situations, that poses special challenges for restorative justice, as it does for traditional retributive justice. Again, restorative justice, with its focus on harm done, is better prepared to address the needs of actual and potential victims. It must be acknowledged, however, that the goal of restoration for sexual predators is often not readily achieved. The psychological and/or social pathology of many sexual predators is such that they appear to be resistant to rehabilitation. From a mental health perspective, sexual predation may be a form of mental illness, or a grievous addiction, begging for therapeutic intervention. From a retributive justice perspective, it is a crime deserving of punishment. The perspective of restorative justice does not limit viewing sexually predatory behavior exclusively as either criminal behavior or as pathology, however. On the one hand, society needs to be protected from sexual predators, whose actions constitute a horrible form of violence against persons. On the other hand, though they need to be held accountable, sexual predators also need help; they may even need to be protected from themselves. A restorative justice approach may be best able to see this form of personal violence as a form of harmful behavior that needs to be addressed with a continuum of coercively restraining and potentially restorative measures.

Acts of terrorism also constitute a hard case for restorative justice. Restorative justice recognizes acts of terrorism to be criminal acts. They can be acts of massive and terrible violence, or they can be acts of ominous threat with minimal destruction. Whatever immediate damage they inflict, they are also designed to instill terror, to disrupt and disturb normal ways of life, to rob people of their sense of safety and equilibrium. Here again, however, restorative justice is better prepared than retributive justice to recognize and address the harm of such acts. The victims of terrorist acts must be of first concern. Their future safety, and the safety of the community or society to which they belong, is integral to that concern. Restorative justice also recognizes, however, that terrorism does not arise or exist in a vacuum. It is not a locus of evil that can be isolated, circumscribed, restrained, and permanently eliminated. It is a symptom of some larger disease. It may be a sign of moral and political failure, in which relationships among certain parts of the world have gone terribly wrong. It must be understood in terms of these relationships, and efforts must be concentrated not only on apprehending terrorists in order to prevent their activities and to provide immediate protection to society but also on righting these relationships. The material circumstances and cultural rifts that breed terrorism must themselves be transformed, both to alleviate the conditions that would motivate future new terrorists and to restore a sense of safety to their prospective victims.

E. Issues for Continued Reflection

This resolution is presented to accomplish several purposes:

1. To identify the biblical and theological bases for restorative justice that are in continuity with clearly articulated positions taken by former General Assemblies;
2. To affirm the continuing use of restorative justice as the guiding metaphor for the work, program, and ministry of the Criminal Justice Program of the Presbyterian Church (U. S. A.);

3. To highlight ways in which restorative justice effectively addresses critical failures in our social, political, and economic relationships, many of them starkly reflected in our criminal “justice” system; and

4. To illustrate the significance of a restorative justice perspective in reflecting upon particular kinds of violence that have become matters of contemporary political, social, and religious debate.

A comprehensive treatment of restorative justice principles and practices would require a much longer document. But even a more comprehensive document would not resolve all of the questions that may be raised by “changing lenses” from a retributive to a restorative justice perspective.⁵¹ Here are a few such questions that invite further reflection:

1. Given that restorative justice emphasizes accountability and restitution rather than punishment, restoration rather than retribution, are there any forms of punishment that are restorative? Is there, in other words, a need for punishment, either on the part of the victim and society, or on the part of the offender, that cannot be satisfied in any other way?

2. It is often said that punishment should fit the crime. However, wide latitude and great disparity exist across our society in the punishments that may legally be imposed for a given crime. The same legal violation may result in a light sentence in one place and a harsh sentence in another. Often there appears to be little correspondence between the seriousness of the crime and the length of sentence that can be legally imposed.

On the other hand, restorative justice advocates would also point out that the particular circumstances of any two individuals committing the same crime could differ almost infinitely. The judicial system formally recognizes the need for “guided discretion” in the meting out of punishments, an implicit acknowledgment that all violators of the same law do not deserve the same punishment. What role should discretion have in our legal system? What dangers exist in giving judges, prosecutors, or juries discretionary powers? Of what significance is it that prosecutors now wield much of the discretionary power that was formerly exercised by judges? What alternatives might there be other than uniform or mandatory sentencing?

3. Is it possible for a person to be beyond restoration? Redemption? If capital punishment is to be rejected on theological and moral grounds, is life imprisonment without parole a desirable and/or acceptable alternative? What part does restorative justice have to play in the life of the prisoner who may be facing life in prison?

4. In theory, all citizens stand equal before the law. In theory, justice is blind. In reality, patterns of discrimination and disadvantage that exist in our society are reflected at every level of the “justice” system. Governments appropriate more money for prosecutors than for public defenders. Victims report, police arrest, prosecutors charge, juries convict, and judges sentence certain categories of people as offenders more than others. How might advocates of restorative justice work with other persons and groups in programs and ministries of social justice that seek to achieve communities and a society affording equal opportunity and justice for all?

5. Why do we treat some crimes as more “criminal” than others? Usually, crimes against persons are treated more severely than property crimes. Crimes of actual physical violence are usually deemed more serious than non-violent crimes. Are these useful distinctions? Are there ways in which these distinctions may obscure dimensions of harm and suffering? Restorative justice focuses on actual harm done, not just discrete actions defined as criminal. How might this perspective require a re-evaluation of the seriousness of particular offenses? For example, “street crime” is usually dealt with more severely than “suite crime” (white collar and/or corporate crime). Is that an accurate reflection of harm done, respectively, by such crimes? Are there ways in which property crimes are also forms of violence? How are institutionalized forms of violence to be compared to direct physical violence in terms of the harmfulness of their effects?

6. People have been and continue to be wrongly convicted. Sometimes they are wrongly executed. More often, they are found to be innocent after many years of incarceration.⁵² In the past this has happened as a result of new evidence, changed testimony, or the confession of the actual perpetrator. Today it also happens as a result of more sophisticated forms of DNA testing and analysis. Does society owe a debt to the wrongly convicted? Should a vindicated prisoner be compensated for time spent in jail or prison? Should such a prisoner have the right to sue for such compensation? Should such a prisoner, as plaintiff, ever be awarded punitive and well as compensatory damages? What kind of value can be placed on time spent incarcerated? On loss of relationships? On loss of reputation? On loss of opportunity? What measures would be most just and fitting to restore a wrongly convicted person to the life and community from which he or she was taken? Are there cases in which society also owes a debt to those who are not convicted but are found to be wrongly accused?

7. Every society requires some means by which to protect its citizens and to enforce those rules, laws, and regulations that are designed to promote the general welfare. Many church members are employed by agencies of government that are committed to public safety and welfare. How might the church work with police and other law enforcement personnel, probation officers, attorneys, judges, corrections officials, and others in the criminal justice system in ways that provide pastoral support to those employed in these capacities while also advancing the goals of restorative justice?

Endnotes

1. Most notably: “The Church and Criminal Justice,” 118th General Assembly (1978) of the Presbyterian Church in the U. S.; “The Church and Victims of Crime,” 120th General Assembly (1980) of the Presbyterian Church in the U. S.; “Justice and the Imprisoned,” 184th General Assembly (1972) of the United Presbyterian Church in the U. S. A.; and “Criminal Justice Policy,” 192nd General Assembly (1980) of the United Presbyterian Church in the U.S.A. See Appendix for the complete text on “Prison Violence and Nonviolent Alternatives,” adopted by the 200th General Assembly (1988).

2. Virginia Mackey, “Restorative Justice: Toward Nonviolence,” Presbyterian Church (U. S. A.), 1997 (originally published 1990, revised 1992), p. 54.

3. One such curriculum by Virginia Mackey and Carolyn Shadle, “Justice or ‘Just Desserts’? An Adult Study of the Restorative Justice Approach,” is available from Presbyterian Distribution Service as PDS#72-630-01-707. Many other resources are available directly from the office of the Criminal Justice Program.

4. Virginia Mackey, "Restorative Justice: Toward Nonviolence," Presbyterian Church (U. S. A.), 1997 (originally published 1990, revised 1992), p. 54.
5. "Justice and the Imprisoned," *Minutes*, UPCUSA, 1972, Part I, pp. 395–432.
6. Eugene Doleschal, "Hidden Crime," *Crime And Delinquency Literature*. 2(5): 546–72, 1970. "Self-report studies of crime have concluded that close to 100 percent of all persons have committed some kind of offense, although few have been arrested. . . . In a substantial portion of the offenses revealed by these studies, the crime was so serious that it could have resulted in a sentence of imprisonment if the offender had been arrested." Cited in "Challenges to the Injustice of the Criminal Justice System: A Christian Call to Responsibility," National Council of Churches of Christ in the U.S.A., 1979, pp. 30–31.
7. E. R. Achtemeier, "Righteousness in the Old Testament," *Interpreter's Dictionary of the Bible*, George Arthur Buttrick, editor, Vol. 4, (Nashville: Abingdon, 1962), pp. 80, 81.
8. James F. Childress, "Righteousness," *Westminster Dictionary of Christian Ethics*, James F. Childress and John McQuarrie, editors (Philadelphia: Westminster Press, 1986), 556.
9. J. A. Ziesler, "Righteousness," *Westminster Dictionary of Christian Theology*, Alan Richardson and John Bowden, editors (Philadelphia: Westminster Press, 1983), 507.
10. So the Scholar's Version translates. Sherman E. Johnson, "The Gospel According to Matthew," *Interpreter's Bible*, George Arthur Buttrick, editor, Vol. VII (Nashville: Abingdon-Cokesbury Press, 1951), p. 301, likewise proposes that the meaning is, "Do not resist through violent means of self-defense," adding, "Jesus' followers must not retaliate." Alternatively, Joachim Jeremias claimed that the literal translation of Matthew 5:39 begins, "But I say to you, Do not go to law with one who is evil"; THE SERMON ON THE MOUNT, trans. by Norman Perrin, Facet Books Biblical Series (Philadelphia: Fortress Books, 1963), p. 28.
11. Paul's exhortation, "never avenge yourselves, but leave room for the wrath of God" [Rom. 12:19], is best understood as a rhetorical expression, denying vengeance to his readers. We should not assume that Paul thereby intends to attribute vengefulness to God.
12. Duncan B. Forrester, "Justice," *Dictionary of Ethics, Theology, and Society*, Paul Barry Clarke and Andrew Linzey, editors (London: Routledge, 1996), 502–3.
13. Paul Tillich, *Love, Power, and Justice* (New York: Oxford University Press, 1972), 71.
14. "Justice and the Imprisoned," 6.
15. "The Way of Peace: Crime, Suffering, and Service," in Pepinsky and Quinney, editors, *Criminology As Peacemaking* (Bloomington, Ind.: Indiana University Press, 1991), 3.
16. Marc Mauer, "The U. S. Criminal Justice System: Realities, Statistics, and Trends," in *Church & Society*, Vol. 87, No. 4, pp. 8–9. Another source, Kevin Wright, *The Great American Crime Myth* (New York: Praeger, 1987), p. 115, puts the figure even lower. He summarizes the statistics as follows: 1 out of 3 offenses are reported; 1 out of 5 reported offenses result in arrest; 1 out of 2 people arrested are formally charged; 9 out of 10 people charged are convicted; 1 out of 2 people convicted receive prison sentences. Overall chance of imprisonment, $1/3 \times 1/5 \times 2 \times 9/10 \times 2 = 3/200$ or 1 in 67. Wright is cited in Lee Griffith, *The Fall of the Prison: Biblical Perspectives on Prison Abolition* (Grand Rapids: Wm. B. Eerdmanns, 1993), p. 50.
17. Noted by Katherine Whitlock, "In a Time of Broken Bones: A Call to Dialogue on Hate Violence and the Limitations of Hate Crimes Legislation," American Friends Service Committee, Philadelphia, Pennsylvania, 2001, p. 17.
18. See, for example, William C. Bailey and Ruth D. Peterson, "Murder, Capital Punishment, and Deterrence: A Review of the Literature," in Hugo A. Bedau, *The Death Penalty in America: Current Controversies* (New York: Oxford University Press, 1997), pp. 135–61.
19. U. S. Department of Justice, Bureau of Justice Statistics; numerous reports available at <http://www.ojp.usdoj.gov/bjs>; this is the primary source for statistics listed here unless otherwise noted; additional statistics have been gleaned from a newly published book by Harmon Wray, *Restorative Justice: Moving Beyond Punishment* (New York: General Board of

Global Ministries, The United Methodist Church, 2002). Each year the U. S. Department of Justice also publishes the latest available statistics in the *Sourcebook of Criminal Justice Statistics*, the most recent version of which is the 28th edition, published in late 2000.

20. Ibid., p. 9.

21. This trend reflects the rising social tide of punitive attitudes toward offenders. It also represents a profound injustice, even on terms generally accepted by retributive justice. As Daniel R. Weinberger, director of the Clinical Brain Disorders Laboratory of the National Institutes of Health recently wrote in the *New York Times*, “the brain of a 15-year-old is not mature—particularly in an area called the pre-frontal cortex, which is critical in good judgment and the suppression of impulse.” (“A Brain Too Young for Good Judgment,” (March 10, 2001). To treat and try juveniles as adults could only be just on the assumption that they can be held equally responsible for their acts, a claim that has little basis in human experience and must now be questioned on scientific grounds as well.

22. David Yount, “Rehabilitation isn’t part of modern prison plan,” Scripps Howard News Service, April 1, 2001.

23. Whitlock, op. cit., p. 19.

24. Ibid., p. 20.

25. FBI Uniform Crime Reports for 2000.

26. U. S. Bureau of Labor Statistics; see <http://data.bls.gov/servlet/SurveyOutputServlet>.

27. Although the majority of Federal prisoners have been sentenced on drug-related charges (63 percent in 1997), with relatively few incarcerated for violent offenses, violent offenders make up the largest single group in State prisons. Nonetheless, Bureau of Justice Statistics for 1997 (latest available) show that for the fourth consecutive year, the largest number of admissions to State prisons were for drug offenses, some 102,600 new inmates. Violent offenders comprise a larger percentage of the total State prison population because they tend to receive longer sentences. The greatest percentage increase in State prison populations during the past two decades has clearly been for drug offenses (over 1000 percent), followed by public order offenses (almost 900 percent). State incarcerations for violent offenses have grown about 229 percent during this time.

28. Whitlock, op. cit., p. 17.

29. “Challenges to the Injustice of the Criminal Justice System: A Christian Call to Responsibility,” National Council of the Churches of Christ in the U. S. A., 1979, p. 11.

30. Jeffrey H. Reiman, *The Rich Get Richer and the Poor Get Prison: Ideology, Class, and Criminal Justice*, Fifth edition (Boston: Allyn & Bacon, 1998), p. 91. Among the harmful actions that Reiman discusses are workplace hazards and inadequate safety precautions, inequitable distribution and improper provision of health care, pollution of the environment by manufacturing processes and by-products, promotion of tobacco products, and use of chemical food additives—the total economic and social costs of which, including human lives lost or diminished, are enormous.

31. Ibid., p. 102.

32. A group of seven leading newspapers in Indiana, for example, recently ran a full week of stories under the theme, “Indiana’s Other Lottery: Death Penalty.” These newspapers were the *South Bend Tribune*, *Evansville Courier & Press*, *Fort Wayne Journal Gazette*, *Muncie Star Press*, *Munster Times of Northwest Indiana*, *Terre Haute Tribune-Star*, and *Hoosier Times*, October 21–28, 2001.

33. David Yount, op. cit.

34. “Justice and the Imprisoned.”

35. According to Bureau of Justice Statistics, at year end 1999 State prisons were between 1 percent and 17 percent above capacity, and Federal prisons were 32 percent above their rated capacity.

36. Steve Donziger, editor, *The Report of the National Criminal Justice Commission* (New York: HarperPerennial, 1996), p. 218. Cited in *The Program Guide for Criminal Justice Sunday*, February 13, 2000, p. 6, published by the Criminal Justice Program, Presbyterian Church (U. S. A.), PDS# 72-630-99-711.

37. For example, in a paper on “Restorative Justice Theory Validation,” presented in October 2000, and reported on in the Summer 2001 issue of “Justice Jottings,” Paul McCold and Ted Wachtel of the International Institute for Restorative Practices found high levels of satisfaction in the handling of their cases among victims (as well as offenders) participating in partial and fully restorative justice programs. The percentages of victims expressing satisfaction with fully or mostly restorative programs were 91 percent and 82 percent respectively, compared to 56 percent for non-restorative programs. The executive summary of their findings was published in issue 10 of “Real Justice Forum,” P.O. Box 229, Bethlehem, PA 18016.

38. Gordon Bazemore and Mark Umbreit, “A Comparison of Four Restorative Conferencing Models,” U. S. Department of Justice, Office of Justice Programs, February 2001, p. 3. These findings were originally reported in Mark Umbreit, *Victim Meets Offender: The Impact of Restorative Justice in Mediation* (Monsey, NY: Criminal Justice Press, 1994). Impeccable research in this field is, unfortunately, very hard to come by, for reasons that include the voluntary nature of most restorative justice programs. Thus the authors note, “In the absence of pure control groups, selection bias cannot be ruled out for the comparisons drawn in this study.”

39. 1980.

40. Harmon Wray, op. cit., p. 5.

41. Video *Broken Vows: Religious Perspectives on Domestic Violence*, Center for Prevention of Sexual and Domestic Violence, Seattle, WA 98103, 1994.

42. See also Henrietta Wilkinson and William Arnold, “Victims of Crime: A Christian Perspective,” Presbyterian Church (U.S.A.), 1982.

43. Mackey, *ibid.*

44. “The Church and Criminal Justice,” 1978.

45. This is evident even to many who have not identified themselves with the restorative justice movement. The U. S. Catholic Bishops, for example, in their *U. S. Bishops’ Statement on Capital Punishment*, note that “punishment . . . involves the deliberate infliction of evil on another”; United States Catholic Conference, Washington, D. C., November 1980, p. 3.

46. Even the American Bar Association, noting problems with incompetent counsel, race discrimination, and the execution of mentally retarded persons and persons who committed crimes as minors, passed a resolution calling for a moratorium on the death penalty in 1997.

47. “Opposition to Capital Punishment”; the citation originally appeared in a resolution adopted by the 171st General Assembly (1959) of the United Presbyterian Church U.S.A. The 1985 statement also cited the 177th UPC General Assembly’s “Resolution on a Continuing Witness to Abolish the Death Penalty” to the effect: “The use of the death penalty tends to brutalize the society that condones it” (1965), and went on to declare, “we believe that the government’s use of death as an instrument of justice places the state in the role of God, who alone is sovereign.”

48. Cf. Jenni Gainsborough and Marc Mauer, “Diminishing Returns: Crime and Incarceration in the 1990s,” The Sentencing Project, Washington, D. C., Sept. 2000. Cited by Katherine Whitlock, op. cit., p. 14.

49. Whitlock, op. cit., p. 8.

50. *Ibid.*, p. x.

51. One of the best-known and most influential of restorative justice advocates and theorists, Howard Zehr, titled his major book in this field *Changing Lenses: A New Focus for Crime and Justice* (Scottsdale, Pa.: Herald Press, 1990).

52. Michael L. Radelet, Hugo A. Bedau, and Constance E. Putnam have identified more than 400 cases of wrongful conviction for capital crimes in the United States in the past century. Roughly a third of the defendants in these cases were sentenced to death. Although, to their knowledge, no state or federal officials have ever acknowledged that a wrongful execution has taken place during the 20th century, the evidence they have amassed convinces that “miscarriages of justice resulting in the execution of the innocent have occurred.” They further assert that “Hundreds of cases, many of them involving miscarriages of justice every bit as serious as any we describe, almost certainly remain to be investigated.” Radelet, Bedau, and Putnam, *In Spite of Innocence: Erroneous Convictions in Capital Cases* (Boston: Northeastern University Press, 1992), pp. 17–19.

APPENDIX

Restorative Justice Resource List—Presbyterian Criminal Justice Program

Restorative Justice: Toward Nonviolence

Ninety-two-page discussion paper on crime and justice, written by the Reverend Virginia Mackey, revised, updated, expanded in 1997. Present responses to crimes, victims, and violence, visions of alternative models, and information about where restorative justice is happening. Six chapters with discussion questions. Bibliography, resource listings, suggestions for how to use the resource, Restorative Justice hymn, other worship materials. PDS #72-630-96-705. Free.

Program Guide for 1995 Criminal Justice Sunday

The “short form” of the original [1990] discussion paper, with summaries of many of the concepts, worship material, more. PDS #72-630-94-701. Free.

Restoring Justice Documentary

Fifty-minute video produced by the Presbyterian Church (U.S.A.) for the National Council of Churches; aired over NBC affiliated stations in 1996 and on other stations since then. Examines the success of the restorative justice approach in several areas, including communities in Oregon, Pennsylvania, Ohio, New York, Colorado, and Minnesota. PDS #72-630-96-720. \$5 plus shipping/handling.

Script for *Restoring Justice* Documentary

Text of the video described above. PDS #72-630-96-725. Free.

Justice or “Just Desserts”? An Adult Study of the Restorative Justice Approach

By the Reverend Virginia Mackey and Dr. Carolyn Shadle, a four-session study of the basic principles and applications of restorative justice. PDS #72-630-01-707. Free.

The Church and the Criminal Justice System: Public Policy Statements of the Presbyterian Church (U.S.A.)

Policies adopted by General Assemblies from 1959 to 2000. Being updated and available Spring 2002. [PDS # to be added.] Free. The following statements are of particular interest:

Statements of the Presbyterian Church U. S.

The Church and Criminal Justice, 118th General Assembly of the Presbyterian Church U. S., 1978;

The Church and Victims of Crime, 120th General Assembly of the Presbyterian Church U. S., 1980;

Statements of the United Presbyterian Church U. S. A.

Justice and the Imprisoned, 184th General Assembly of the United Presbyterian Church U. S. A., 1972;

Criminal Justice Policy, 192nd General Assembly of the United Presbyterian Church U. S. A., 1980.

Prison Violence and Nonviolent Alternatives

Action by the 200th General Assembly (1988), Presbyterian Church (U.S.A.)

Whereas, the church historically was instrumental in the creation of prisons as a response to criminal behavior; and

Whereas, prisons have proven to be violent institutions used by the criminal justice system as punishment and *for* punishment; and

Whereas, the United Presbyterian Church U.S.A. has previously affirmed, “Society’s goal should be the abolition of prisons as they now exist. The immediate agenda should be the establishment of processes to reach that goal, developing and implementing a philosophy of corrections that no longer depends upon punishment *per se*” (184th General Assembly, 1972); and

Whereas, the Presbyterian Church U.S. has previously affirmed, “While Christian faith in itself cannot provide the details of a good justice system, it can and should speak about the fundamental motives and final criteria for evaluating actual practice and proposed plans in this area” (118th General Assembly, 1978); and

Whereas, the United Presbyterian Church U.S.A. has openly accepted and confesses its role in the world as “ministers of reconciliation” (Confession of 1967); and

Whereas, the United States of America, among the most prosperous of Western nations, imprisons more of its citizens than any other Western nation; and

Whereas, statistics indicate that approximately one in four Black males will go to prison in his lifetime and that the United States’ imprisonment of people of color is the highest in the world, indicating that the use of prisons in this country is a racial as well as violent issue;

Therefore, the 200th General Assembly of the Presbyterian Church U.S.A.) (1988):

1. Strongly reaffirms the theology of previous General Assemblies that urged individual Presbyterians and the entities of the General Assembly to advocate a social order where compassion and justice characterize efforts toward those in the criminal justice system. We reaffirm the actions that previous General Assemblies have identified as necessary to bring justice and compassion into the fabric of the prison system, including the abolition of prisons as they now exist, changing a prison system that is based on the concept of punishment to one that encourages the restoration of the offender to the community, and the development of alternatives to incarceration.

2. Directs the Social Justice and Peacemaking Unit to design a publication that presents nonviolent alternatives to imprisonment.

3. Directs the Moderator to communicate with all state governors, legislative judicial committees, and correctional officials to express the concern of the 200th General Assembly regarding violence and punishment in prisons and the need to develop a nonpunitive philosophy that stresses the use of the least restrictive alternatives to imprisonment, including community-based corrections.

4. Directs the Moderator to communicate with all prison wardens the General Assembly’s concern about the negative effect of isolation on the human spirit and the need to move toward a more reconciling philosophy of corrections, asking what steps are being taken in their facilities to move toward the goals stated above, and to encourage synods and presbyteries through their appropriate committees to begin related conversations with prison wardens and boards.