

Hawai'i Friends of Restorative Justice

Innovation Speakers Series:

Howard Zehr and John Braithwaite

*Transcript of December 15, 2020 online interview with Howard Zehr and John Braithwaite.
John introduced Howard. The recording began a few minutes after John had been speaking.
Lorenn Walker asked questions.*

John (00:12): There's a story I heard in Afghanistan of 2 children greeting a wise old man who's arriving on a donkey into the village and one of the children says to him, "Wise old man, where are you heading?" And the wise old man bends down to them, pats his donkey and says "I'm not sure where I'm heading. Perhaps, you should ask the donkey." It's a story that's meant to communicate a few things. It's a story about humility that the wise old man has which is one of Howard's great strengths. It's a story about leadership from below which Howard has taught us how to enable. It's the story about respect and honor to all of God's creatures, which is also at the heart of Howard's makeup. I should not tell my last story I think, and move on to the important part of the activities. But before doing that, I also want introduce Lorenn, who like Howard, Lorenn been a great learner from Indigenous people, especially Polynesian but not only Polynesian, and she taken those learnings and spoken to a northern/western and western audience in a way that has been so evocative also over many years. The Hawaiian Friends for Restorative Justice, of which Lorenn is a great leader, it's a special example of thinking globally and acting locally. It always inspires me to engage with Lorenn, as well as Howard, and with the Hawaiian Friends for Restorative Justice. So lovely to be here and back to you both, Lorenn.

Lorenn (02:23): Thank you, John. That was really nice. Thank you so much and I completely agree with everything you said about Howard. Howard, do you want to just start by saying whatever you want right now, without a question?

Howard (02:45): Thank you for having me here. John, thank you for that lovely introduction and you're right that not many people probably read that first book. Do you remember the cover on that book? It was terrible. It was a picture of a woman strangling her child. I had no choice in that, maybe that's why I became a photographer so I'd have a little control over the images. I'm happy to be here, so go wherever you want to go.

Lorenn (03:20): Okay, thanks, Howard. While in your writings, you have said in the past that you have your own Indigenous and religious traditions and they were related to your vision of RJ, Restorative Justice, do you want to explain that a little bit?

Howard (03:38): Well, when I was sort of pulling these things together in my book *Changing Lenses* is kind of a story of that journey. I really felt like I was pulling together lots of different ideas. I think I say in the book a work of synthesis, not invention. I had some vague ideas about Indigenous justices but most of those were anecdotes. I felt I have no authority to speak on those but I went, I started with my experience. I then looked at my religious tradition, the Christian tradition. My training is as an European historian, particularly continental historian, so I went back and looked at those traditions, which are in a way, my Indigenous traditions and went from there. I drew more, ya know a lot of stuff written about North American, certainly European law is based on English sources. I really drew more from the continental side of things, partly because my background is German-Swiss, and my training has largely been on the continent, too. So...

Lorenn (05:22): Great, also Howard, you have a very distinct experience that you attended Morehouse College, which is a historically Black college and I believe you were the first white person to graduate from there? You said that was a formative experience. Could you tell us what why? What was it like? 1963 graduated?

Howard (05:53): '66 I graduated, I entered in '63. That was 9 years after Brown vs Education. So this kind of interchange was pretty new to all of us. One of the first things there was culture shock - I was only 18. It was a cultural shock. I tried to prepare for it with dimensions I never anticipated. That, of course I never anticipated people understood me and read my body language in a way no one else had before. What I was trying to say one was totally different than my experience had before. One of the things I began to realize was that what we think we know is shaped by who we are, by our histories, our culture and so forth. That's why I've written a lot about the importance of humility and in the sense of realizing the limits of what we know and how its shaped by my gender, my culture and my experience. That was a big lesson for me. I learned a lot about white privilege. I became aware of the many privileges that my Morehouse brothers did not have. That was a very important experience, the experience of being a minority- I learned very acutely what it means to be a minority, which was an important experience. in many ways I don't think the rest of my life would have unraveled the way it did without that experience.

Lorenn (07:37): Where did you come from? Where did you grow up and stuff?

Howard (07:45): I grew up in Indiana- the midwest born in Illinois moved to Indiana in junior high. I went to several colleges. I started at a Mennonite college near where I lived in Goshen, Indiana, and went to Morehouse. I went then to Bethel College in Kansas and back to Morehouse and in the last year I went on the NAACP legal defense fund minority scholarship that Dr. Benjamin Mays, the president of Morehouse, arranged for me. That was kind of an irony.

Lorenn (08:27): I've read you met Dr. Martin Luther King, Jr.?

Howard (08:32): I did once. A friend of mine who worked with him. We met him at Ebenezer church where he preached on the back stairway, coming back down from the pulpit. He was still on the faculty, technically, when I was at Morehouse. He wasn't actively teaching, of course.

Lorenn (08:51): What was that like- to meet him?

Howard (08: 52): That was a huge honor, I mean obviously! He was one of the people I looked up to as a kind of mentor. Benjamin Mays was a kind of a mentor to King because King graduated from Morehouse. Benjamin Mays mentored him, and he was well known educator and I really looked up to him as well

Lorenn (09:18): What do you think is the importance of mentoring/mentorship?

Howard (09:24): The mentors I've had in my life - the ones that were more symbolic mentors and then there were those who were like Dr.Melvin Kennedy, a history teacher at Morehouse- he really took me under his wing and really helped me make decisions where I went after college. They played critical roles. People have asked me sometimes how I ended up at Morehouse with sort of justice thing. One of the images that really sticks in my head- that really has to do with mentoring- Dr. Vincent Harding, was one of King's advisors and consultants, he stayed in our home. He was a Mennonite minister for a while, during that time, he stayed in our home several times when I was in high school. I have this vivid memory of sitting at the dinner table while he tried to help this white naive high school student begin to grapple with what racial justice was about. While it didn't send me directly to Morehouse, that was a really important part of my move to Morehouse eventually. He was then teaching at Spellman when I was there. He had been living in Atlanta and I got to interact with him there as well.

Lorenn (10:47): That's great. Your Mennonite background has influence and I learned, too, from reading your work that it's called Anabaptist Mennonite, that it's pacifist. Do you want to just talk about that for a second? What is Mennonite is and how has it influenced you?

Howard (11:08): Mennonites came out of Protestant reformation. The Anabaptist movement was the radical left wing of the Protestant Reformation that said adults had to make decisions; that the state couldn't tell you who was going to be a believer or be baptized. They believed really strongly in community, taking care of each other. They had a big emphasis on servanthood, serving one another and non-violence was a big part of it. They were much persecuted by both the Protestants and Catholics at that time and dispersed then to various places. That's partly how they ended up in North America. I come from that tradition. That non-violence and theology has been a really big influence on my life. Part of Mennonite tradition, Anabaptist tradition, is the importance of being with people, being present with people, and walking with people and that was a big part, I think, that played in for me, too.

Lorenn (12:14): Great. You said your early work was with people who were in prison or coming out of prison and you worked with the defense attorneys. You said that: “You didn’t know much about crime victims and weren’t motivated to learn.” What changed that?

Howard (12:34): After I graduated, after I was in the process of finishing my degree, I went to Talladega College in Alabama in the 70s to teach, that’s another historically black college. It was there I started getting involved in criminal justice issues. Particularly two kinds, one of them was advocating for prisoners. Another working with defense attorneys to help them pick juries in cases like police brutality cases, prison riot cases, death penalty cases. I really developed what I thought was a critical perspective on justice. In fact I wrote an article in Sojourners magazine, a national magazine, way back in the 70s, about the racism and the mistakes they make and so forth. Didn’t say a word about victims because like many advocates for one side or the other, you kind of had blinders. Maybe you don’t want to know what the other side is like. I just saw it as justice for people who were being charged as defendants and for prisoners. It was only when I had a midlife crisis, left teaching, and moved to northern Indiana- My father just died, directing some law classes and I was directing a transitional house for people coming out of prison and it almost immediately burned down. There’s a whole story behind that, too. My board and I decided we really didn’t have the resources to run a proper transition program. There was a new idea in our probation department about bringing victims and offenders together. The board wanted me to go check that out and I really didn’t want to. For one thing, it meant interacting with judges and probation. We were always the good guys. We were the defense attorneys. We were the folks in the white hats and ultimately interacting with victims. But, It didn’t take very long until I got involved in this process of bringing these sides together and seeing what happened. My whole world began to spin and that’s when I began to rethink everything.

Lorenn (14:54): How did you think to bring them together?

Howard (14:58) : I didn’t invent that. I mean, the first case as you know from history was in Canada, a little town called Elmira, Canada. Some Mennonite probation officers in northern Indiana had gotten a similar idea and then they heard about that one trying to do it within probation. It wasn’t going very well when I showed up on the scene. It wasn’t my idea to do it. It was others’ idea to do it. I immediately saw, well for one thing, it needed to be systemized and made more concrete. I found people all over the country had heard about this idea now based on these and no one knew quite what to do. I wrote manuals. I wrote a little book called Mediating the Victim-Offender Conflict. My self image has always been kind of a journalist of justice. When I want to understand a field, I usually don’t go to someone in that field. I try to find a really good journalist that is interpreting that field. That’s kind of my self image. I was trying to interpret for people we were doing there in Elkhart, Indiana. I began to write materials and help other people. I’ve lost track of your question there.

Lorenn (16:14): Oh, no that's great. You're a journalist for justice. That's how you started being a journalist for justice.

Howard (16:20): I still sort of see myself that way.

Lorenn (16:25): I forgot to say, I hope no one minds, I'm recording this, so if anybody objects, go ahead and say it. Sometimes, people think restorative justice is talking about people who have been harmed and the harmers--we try not to say victim/offender, but those different groups think restorative justice should only be initiated by those who were hurt; they are the only ones who should benefit from it. What do you think about it?

Howard (17:02): First of all let's be clear there are different ways of looking at restorative justice. You can see it as a set of practices and some of those practices mean bringing people who have been harmed together with people who have caused the harm. It's also a philosophy that can be applied in many different situations regardless whether someone has been harmed, brought together or whatever. Let's be clear that it's much more than just a practice of bringing so called victims and so called offenders together. I think your questions come from that model. First of all, people who have been harmed always have to be gatekeepers--they should never be dragged in, they should always make informed choices, they should have the choice to do it. Severe violence dialogues have been required that the victims initiate it. That is more political than probably then it's a cautionary thing. It is problematic if someone who has caused serious harm begins to reach out to the person they harmed. But my friends in Canada who have been doing this longer than anyone in North America say it works equally well regardless of how it's initiated. It just has to be done right and carefully. so people aren't revictimized and they have informed choices. Does that get at your question?

Lorenn (18:45): People have said you can't have restorative practices unless the victim initiates it.

Howard (18:47): They have to want to do it. They have to choose to do it. If it's not done that way it was to be done very carefully. One way it's being done in North America, some of the programs require the victim to initiate, and how they do that is having a letter bank for people who have caused harm and are in prison can post a letter that's vetted, and those who have been harmed can look at that and decide if they want to move forward. That's one way of moving forward if the person that caused the harm wants to initiate it in a way.

Lorenn (19:27): If somebody does, if somebody who is really remorseful, a person who harmed someone, if they go through some other third party and say- I'd really like to meet with this person- that's okay if the third party asks the victim or goes through some other?

Howard (19:52): It was to be done really carefully so it doesn't re-traumatize people. So, sometimes you talk to someone who knows the person to see if they're ready for it, their religious leader, or someone like that to find out if it might be useful. It just has to be done very carefully.

Lorenn (20:10): Talking about religion, so what are your ideas about it? A lot has been written in earlier days that restorative justice is a very spiritual process. What do you say, is it? Does it *have* to be a spiritual process? If a person is more worldly and not spiritual, can they participate in restorative practices?

Howard (20:40): It certainly fits in my tradition as Christian but my students my Muslim students, so many traditions have looked into their traditions as part of their studies here and said this resonated with my tradition as well. It has a lot of different roots. It's interesting- a lot of people who don't consider themselves religious who got through these things end up saying it's a spiritual experience. I remember we had a *hui* in New Zealand years ago where we brought together practitioners and academics and government people- and one of the hui was a gathering on *what do we do with this?* We are doing something a lot of people feel is spiritual that yet the government is sponsoring. I don't think you have to be religious you, i don't have to think of yourself as spiritual. But, many people say there is that dimension even if they didn't start out with that in mind

Lorenn (21:50): You have said that there is a juxtaposition of restorative justice and retribution. Do you want to talk about that?

Howard (22: 03): When I wrote Changing Lenses, I wrote about Retributive and restorative as opposites. It was a great teaching tool. I had these charts contrasting them. Conrad Brunk, philosophy and law professor, took me on in an article and he said you are so missing not only the point by talking about these as opposites because they actually have a lot in common. Retribution as a philosophy says that the person that causes the harm owes something the person who is harmed is owed something. It says that there ought to be a proportionality between the harm and the response. He said Restorative Justice says the same things- what is different on the currency of what will right that balance. Retributive theory says it's punishment rights the balance, and in our experience that isn't fulfilling. Restorative Justice, as John would say, says acts of responsibility to do something about it and try to make it right in some way. I've found that this [understanding] opens up dialogue before by not being so oppositional by finding this common ground.

Lorenn (23:30): You're also influenced heavily by Nils Christie and Herman Bianchi. Do you want to talk about their influence on your work? I don't think a lot of people know who Herman Bianchi was. Do you want to tell us who he was?

Howard (23:46): Nils Christie probably had the most influence on me, but Herman Bianchi was a Dutch law professor who was writing about things related to this. He had a book called *Justice as Sanctuary* where he talked about this. In the early days of this movement, I was hired by this organization to justice stuff in the US. My counterpart in Canada was Dave Worth, who was one of two guys who did the first case that started all of this. We had what Herman used to say you got to have to have a lot of *palaver*, which is a Portuguese word that historically comes from Portuguese traders having to go to Africa and negotiate, and they often complained about it. It comes from Portuguese traders talking lots of dialogue, and every so often we would have a gathering two dozen - we would make sure it's a mix of academics and practitioners and bring in a speakers, eat together. Herman and Nils were both early speakers in these things that's how I learned about Herman and Nils. Christie's book - there's two things that are really influential. He wrote about conflict as property, arguing that conflicts are a resource in which we grow and when we let the state take over and rob us of important property. But the little book, the one that was really influential over me was called, *The limits to pain*. Nils Christie raised questions about pain, and what are conditions that pain raised questions about wanting to cause pain about pain reduce our reliance on pain. Two dimensions of that book were really important, one was the concept itself that questions punishment to limit pain, and one was the model. To me it is called a provocative essay, write a provocative essay. Very clearly, Nils' book was in my mind when I wrote that book. *Limits to pain* is not a definitive work but it really makes you rethink some things and that is what I wanted to do.

Loren (26:27): You definitely wrote a provocative book with *Changing Lenses*. What can you tell us about that? What does Christie say about pain?

Howard (26:36): He argues that the closer you are to people the harder it is to administer pain. He studied the Holocaust, and the guards in the concentration camps, some are more humane than other and those are the ones who spent more time with the prisoners most directly. He said one criteria, one condition, for limiting pain is to get people to interact and know each other. He said we'll never get rid of pain, but we can set conditions to limit it and one of those is learning to know people. He also talked about how crime is something we create, it's a social construction. He didn't use the word social construction, but he told the story of when he went out in the country, a small village he asked the constable to follow him around. First of all he said, "do you have crime?" "Oh, not really, we really don't have crime, we have some fights" Well, anyway he follows him around and this woman calls and says this person stole my purse. He [the constable] never thinks to call it a crime. Somebody wronging somebody. I found a similar thing, in my P.H.D. studies looked at stats from Germany in the 19th century, it was a quantitative study. I found all these records -provincial and village- but there was no category for no assault and battery - there was theft, but no assault. It's because people have fights and no one thought to define it as a crime. Theft is a crime as that's a serious thing in a small town or village. Another thing he talked about was how we socially construct concepts of crime, justice, and punishment.

Lorenn (28:40): What was it that drew you to that? What did you like about what he said?

Howard (28:48): I liked the things I'm saying here. I had studied this history of science as a graduate, and I learned Thomas Aquinas and paradigm theory - which fits nicely with the idea that justice is socially constructed. So, that really resonated for me and the idea we really need to stop and question: should we deliver pain? John has written the history of criminality is the history of delivering pain. No one stops and asks if we should be delivering pain.

Lorenn (29:34): How would you like to see justice? He got you to think about justice so differently, do you have a vision for how it would be constructed better?

Howard (29:52): The distinction between crime and the other kinds of harm in civil is a fairly arbitrary one. But the boundary keeps changing as we define more and more things as crime. I wish we could take a more civil law approach to these things in real life - New Zealand, it isn't perfect by any means, but their process for youth justice where you reserve the western legal system - and we need a legal system where people are denying responsibility and provide for due process and all of that and protection of human rights- but, in concept New Zealand model is to reserve courts and for the rest of them you put it in a more restorative process. That, in a particular way, had the potential for blending the best of both worlds. Does that make sense?

Lorenn (30:58): What stage would you like to see that civil law state bring the case? Civil Law is people bringing the case, not the state.

Howard (31:25): The state is the victim- which is the real problem.

Lorenn (31:28): You want to see people do roe? Go back to Christie ownership of the conflict, and how that works.

Howard (31:42): Well Judge McElrae in New Zealand would go to court and when he retired, he advocated the government to create these community centers where people could go and these issues would be worked out. This way the courts would only be used if someone was denying it and to me this is a more reasonable model.

Lorenn (32:02): Norway kind of has that model, and Nils- but even he was a little worried and became institutionalized at the end of his life- he kind of-

Howard (32:20): Everything gets everything co-opted. Every intervention- every social intervention that I ever did got co-opted and diverted and we have a responsibility to be aware of that. I looked at the history of criminal law in the United States every instance as I was writing, and every so-called reform has been co-opted and in many cases its ended up worse than what it was trying to replace. My big worry is this going to happen to Restorative Justice? Is this going

to be another globalizing force coming from the top down? And that's why my career has been largely working with grass roots, making sure things happen from the bottom-up. I'm highly skeptical of top-down ways of implementing things.

Lorenn (33:13): What do you think about the government having offices of RJ?

Howard (33:23): It worries me, I wish we'd get enabling legislation that takes care of confidentiality and things like that. I personally, I'd rather the states stay out of it- it just goes wrong. My interest has been seeing communities develop these programs locally and then, if possible if you need legislation on the statewide level. My goal would be enabling the local level rather than mandating. One of the big debates, and John can probably say more about this is how do you create standards that don't give the state control. We need to have standards, but as you look at the mediation standards regulations come from the state it pushes out the community members. Here in Virginia, the lawyers take over, the state takes over and the community members can't afford to be a part of it. I've seen that so many times in RJ instead of engaging the community and empowering the community, they take over.

Lorenn (34:58) :We can ask John about that, if he doesn't mind. Just one thing quickly- what you developed is called modern restorative justice which is distinguished from indigenous restorative justice. Do you wanna talk about that for a minute? The differences between the two? And maybe our own version- As John mentioned westerners had restorative justice back in the day.

Howard (35:31): He's had some coffee after all, the context is quite different. Indigenous justice was largely happening in the context of collective society. Today we try to operate restorative justice in a much more individual way. We have to remind ourselves of a web of relations that is often taken for granted. I think in some ways, restorative justice is the best indigenous tradition mixed with modern human rights sensibilities. Many of those indigenous practices were very authoritarian or they were very male-oriented, but they had a lot of restorative elements in empowering people and getting everyone involved, victim and so forth I see it as a blend- john know Ali Gohar in Pakistan, for instance, and when Ali graduated from our program he brought back the idea of RJ to communicate with the elders as they found the circle process good for addressing human rights issues and women. That's one of the most rewarding things in restorative justice to see your students go home and re-vitalize a tradition that has been so oppressed at home and make it work within the context of a modern legal system.

Lorenn (37:31): Things evolve and change. So John do you want to speak to that- the government imbedding itself into RJ?

John (37:54): I do think standards are dangerous, we don't know enough about the micro-details about what works better than something else- another context or setting standards for restorative

justice -there's a place for that. However, what I think is much more important is peer review. It's so much more important for us to work harder than we do sitting in on each other's work, master practitioners sitting on neo-practitioners, practitioners who are very experienced and who have maybe got too comfortable having conversations about different ways of doing it. Not prescriptive, but conversations about improving practice. We know from teaching that the best way to improve teaching is not setting standards but rather that kind of getting teachers to sit in on each other's class and just have a bit of chat about how you would have handled that situation in the classroom and perhaps been a bit better. It's not just even that, take the Indigenous issue that came up earlier - I've always been of the view western-democratic view you shouldn't be in the circle if you're not a stakeholder in the injustice. We had a program in our town that for a while, had: victims, offenders and their supporters, plus community representatives. That was a response to people in the community who said that you just don't want deals done between victims and offenders, that the community is also a stakeholder for the community's safety. I really thought that was a bad idea. If you observe a lot of Indigenous conferences their philosophy is less democratic, in the sense they might involve an elder from a different town to come along to the circle because that elder had special, spiritual gifts that may--have a *manna* to use the Maori term--a way of spiritual being in the circle that is infectious. As someone who is spiritually shallow, I can see the reality of more spiritual people being brought into the circle even though they are not stakeholders. Although that may not work on the issue of religion in New Zealand--I went to a conference in New Zealand--a Maori conference--and they would usually open with Christian prayer. In Australia, we don't do that. We think that's inappropriate in a state-enabled restorative process. We shouldn't have a Christian prayer. It's fine, and it works if you got a Christian perpetrator, the Christian victims family can you say "Do you object?" and the Muslim family they almost always say that they wouldnt object. Sometimes they take the opportunity to say their Muslim prayer as well, so its very hard to write rules about these things, but we can have better quality conversations the nuance of them.

Lorenn (42:00): Howard, what do you think the basic elements are to keep a restorative conversation healthy and good? What would you like to see? What are the basic standards?

Howard (42:07): I haven't thought about this in awhile. A respectful conversation obviously is important one thing about the New Zealand model is charged with making sure its culturally appropriate so their job ahead of time they would ask a Muslim and a Christian family: "Are you going to be comfortable?" They will negotiate this ahead of time and I think that's important. Another comment about the problem of standards, is that there are such cultural differences in what is considered culturally appropriate for an encounter, my way of approaching something may be totally culturally inappropriate or something that I may think are not appropriate in another cultural context are, so it's really hard and dangerous to try to write prescriptive rules about how these things go on. I think things like being respectful and making sure everyone has space to speak as they want to, that everybody commits to what Ron Claassen often calls *unconditional commitment to being constructive*. You certainly may be angry--you should be

angry if you've been harmed--but be constructive, so whatever it takes to get that context is important, I think.

Lorenn (43:54): We have a question from Joanthan, Jonathan Derby, he's working [to edit] with Dan Van Ness & Strong's *Restoring Justice* -- [Jonathan asks about] protecting rights. How do you balance and protect human rights while limiting the state's role?

Howard (44:20): A part of it is what John said, having some outsiders there. One of the things about the New Zealand model, is that it calls for specially selected and trained youth advocates to sit in on it [the circle]. With that in mind, it's really interesting. I've sat in on interviews for people who want to be a youth advocate. I often say it's easier to be a death penalty attorney in the United States than to be a youth advocate in New Zealand, because they are really, really demanding to make sure they understand the role. It's not an adversarial role, it's a helping role. Part of it is building in outside peer review--as John said--and maybe having people in there whose job it is to do that. I remember a case where an Aboriginal elder would have a prosecutor sitting in their circle. Having an Aboriginal, they knew that some of their practices were pretty punitive and they needed to be offset and a prosecutor and it could be helpful if it were incorporated into today's world.

Lorenn (45:28): Talking about punitiveness, what do you think about it? Is there a place for punishment in restorative justice?

Howard (45:47): It will be interesting to see how John articulates this. That has been a big debate in this field. I think definitely, things are going to be difficult. It depends on how you define punishment, if you define it as Nils Christie did--which is pain intended as pain--that's one thing. That's how I would define punishment. Pain intended as pain. Most of the time, if it's serious infraction of some sort, it's going to need to be difficult. The person harmed is going to need to know that it's difficult for the person who caused the harm, and if it's not it's probably not going to mean much to the person who has caused the harm- there's that element. I did notice in New Zealand in family conferences that there's often an element that's basically punitive - not out of hate, it's regulated- John one time said that the law ought to set the limits of what you can't go beyond that-you can correct me if I'm wrong, John. I'm not sure there isn't some kind of punitive element appropriate sometimes, but it has to be limited. Meaningful outcomes are difficult and may be experienced- and most people in the United States have the language to talk about it. In our earliest surveys, of people - these so-called "offenders". They talked about punishment, but if you looked at the agreements, they weren't really punishment. They were just hard to do. That was just the language they had to talk about it.

Lorenn (47:35): John, you said that a restorative outcome should not be worse than what the state could do. John, what do you think about that punishment in restorative justice?

John (47:56): Well, I do think that. Even that is not so easy. You want clear upper limits but people have complex views of social justice that challenge that at times. We had a conference quite early on in Australia in which a group of young people went joyriding in a car. They did not steal the car, the car was returned to where it was taken, but unfortunately they did a lot of damage to the car. When the conference occurred, the owner of the car was a not well-off working class gentleman who could no longer get to work because the clutch on the car had gone as a result of the joyriding in it. One of these kids was from a very wealthy family and this wealthy family had given him a Porsche, I think it was. It was a car that's worth a couple hundred thousand dollars. The family suggested and the young person- the seventeen year old- and the conference agreed what should be done was to give the victim the Porsche. That's really challenging. A child, first offender, who a court is never going to impose a value of more than two hundred thousand dollars on a child who hasn't even stolen the car- just a joyride. You know, the principle is clear. It should be the law that sets upper limits. We shouldn't exceed the upper limits. Well, it's not punishment, it's reparations.

Howard (50:14): People do get creative, that's the other thing about it. In the early days, I forget what the offense was, a young person did some kind of damage and wanted them to go to church for a certain number of Sundays. Everybody was happy with it, so the court had to sign off on it. Every week the kid brought in a bulletin saying he went to church and everybody was happy it doesn't fall under usual legal framework

Lorenn (50:53): It's always unique. My friend, Keyria Rogers she's in Illinois and she's doing really great work with restorative justice and she was running a teen court and she learned it's restorative justice teen court, but then as she learned about it she was like: no it's not! So with Mark Umbrecht the three of us wrote a paper about teen court-so she wanted to know what you think about using evidence-based assessment tools to assess people? About the criminogenic needs and deciding if they should be punished?

Howard (51:49): I think it's pretty dangerous. There are a lot of cultural assumptions, class assumptions, built into those things, those assessments things have been pretty misused and they are pretty dangerous. Do you have any thoughts on that John?

John (51:52) I agree with your comment.

Lorenn (52:10): Are you familiar with ACES? The Adverse Childhood Experience Survey? It's gotten really big now in the United States. People are giving questionnaires, its ten questions, like 'were your parents divorced?' 'Was there abuse in the home?' 'Was there drug abuse?'. And then if you score four or more- then you've been traumatized. So now people are using the assessment with school kids. Some research shows that people that had higher ace scores their MRIs show that not the amygdala, but the hypothalamus is bigger. People are saying from this-

oh it causes brain damage! Of course we're against abuse. All kids should grow up in a good place. What do you think of those assessments ?

Howard (53:23): I've heard about it but I don't know anything about it. We know a lot more about trauma than we used to and how important it is and it ought to be part of restorative training- awareness of trauma. We run a program called STAR where we train people in trauma and response to trauma-not just individuals but for society. It's called communal Strategies Trauma Awareness and Recovery - but it's really interesting you have to be careful how to use the assessment people are so different in the way they respond. I have people in my family who have experienced real trauma, and one kid is devastated and the other one kid is incredible, is resilient, the other builds on trauma and becomes this amazing teacher. It may be helpful to understand what you might be dealing with but you really have to be careful about predicting and intervention based on that, I think. That's just my gut response

Lorenn (54:37): I agree with you. What do you think, John? Do they have that in Australia yet?

John: (54:44) To different degrees, but again, my comment would be the same as you two.

Lorenn (54: 57): Let's see- there's more questions - here's our friend from Japan, our friend Kazu. He says that when offenders become happy they imagine the loss of their own happiness more vividly and it's more punitive than the death penalty. Japan is interesting, John I know you went there, I know you've written about Japanese criminal justice. Do you want to respond?

John (55: 47): I certainly don't consider myself an expert on Japan but I do think there is a lot to learn in Japan about listening and about doing it in an reintegrative way. When I wrote *Crime Shame and Reintegration*, I talked about the high rate of convicted murder offenders, not manslaughter offenders, but murder offenders that serve no prison time as a result of negotiations. With very high reparation paid to families and that's families want to cover the education of a child, for example, that won't be covered when the parents are dead. And so it could be millions of dollars across a lifetime where they are taking a large percentage of their income out of their paychecks and paying it to that family rather than to their own family and we're seeing that in Colombia, too, that kind of learning where you have massive- perhaps genocidal- crimes, even ones where political parties had been ordered wiped out by the state, for example, there are generals who are making formal, criminal admissions and doing quite big things by way of reparations, like five years of dangerous work in mine removal to preserve future children of Colombia from explosions and having their legs blown off on in mines. I think societies like Japan and Colombia we can learn a lot from the boldness at times not all of the time in some cases. what do you think of it yourself, Kazu?

Lorenn (58:11):Is Howard still here? Oh, hi, Howard

Sunny Schwartz made this comment that punitive versus accountability gets foggy in recent conversations and approaches here in San Francisco. I've found some self identified progressive attorneys who insist on no incarceration which includes serious violent crimes and its concerning to her. What do you guys think about that?

Howard (58:47): While I think It's unrealistic. I think prison is a bad thing and the way prisons are run is really a bad thing. I think some people need to be kept away from us, at least for a while but I would like to see it done in a more restorative way. But the "lifers" I did this book called "*Doing Life*" where I interviewed women serving actual life sentences in Pennsylvania - a couple years ago I went back to some of them about 25 years later and I got to re-interview and photograph them. I'll be doing a new book on that. But, a number of them talked about their maturation process and that they had to be away from the streets and away from the environment that they were in, it was unfortunately the situation they were in that was so punitive it took them a long time to make that transition. But I think it's unrealistic to think that you could do this without some kind of way of keeping people away from us at least for a while. It has been done in some countries a lot more restoratively than what we do here in North America, at least in the United States.

Lorenn (1:00:01) : Yeah, have you heard about the -do you know about APAC?The Association for the Protection of A Condemned Person? Do you know about Mario Taboni? He started this prison system in Brazil where the people in prison have the keys and they run the place. I had the opportunity to spend some time at one and it was pretty remarkable. I went to Halden, I went to all of them. I'm a prison abolitionist now. I just think it's a bad model. We should have, like, hospitals like what you were saying--you know what I mean? You know, the pain thing, the punishment thing, doesn't make people nice, right?

Would you like to add anything to that, John?

John (1:00:42): Well I always tell you about Australia which has a much lower imprisonment rate than the United States. more 90 percent of people who are currently in prison should not be there, but I agree with Howard- if you have a case of attempted murder where an offender says as soon as I get out I'm going to go kill her because that's what she deserved, because that's righteous, that's justice, if you have someone [like this] who is terribly insistent, then retaining that person in prison is the appropriate community response. That being said, I would say that no crime is so serious where you can't have the view that no prison is required. That's what I find quite acceptable for the Japanese, they say yes, this is a serious matter but it's not necessary [to put the offender in jail] so as long as there's a meaningful form of justice negotiating with the victim, then they [the offender] does not have to go to prison. After all genocide most people who are criminally responsible for genocide we don't seem to imprison. When we were on the allied side in World War 2, we dropped bombs on Hiroshima and Nagasaki. For me, that was a crime of genocide. Do I think, therefore, that those who are responsible for taking that decision

Should they have gone to prison? No, that does take you back to the limits of pain by Christene Sang. Well the Holocaust, millions of people killed but how much restoring of the balance is with one broken neck for that? You know, that great Norwegian-Style prose that asks that stuff about these questions. That's where Japan is very helpful to think about these big differences and how we punish a crime like Hiroshima.

Lorenn (1:03:00): Someone else has a good question about a big thing in the US: defunding the police. It's not a movement to erase the police but to take away some of their money and put it into social programs. How do you think restorative justice can- or do you think there's a place for a role for Restorative Justice in that? Howard?

Howard (1:03:32): Oh, dear. Well, yeah, there is. I don't have an easy answer to it though. There are a few departments which are taking this on. We've been still holding palavers from time to time- we had one for police supervisors and policemen and police departments who were trying to do restorative justice. There's some really innovative stuff going on in trying to apply it [Restorative Justice] to policing settings. I'm not trying to do this- some years ago I decided to let the younger, newer, more diverse people take leadership, so I've lost track of things. I'm not the best recourse on this.

Lorenn (1:04:21): John, do you want to say anything about that? Anything about changing the police departments and how restorative justice can help with that?

John (1:04:45): Yes, I think it can help a lot. And I think that can be a big strength of Restorative justice over traditional justice, I've been in conferences here, in this town, where a young man has broken the law in some serious way and conference outcomes agreed and then the mother of the young man will say at the end of the conference- well, we think that it's just that he's required to this and that. But I do think the biggest injustice here was that your constable used excessive force in the arrest of my son, which is the much more serious crime of assault. I don't think we use restorative justice enough to exploit that possibility of bubbling up the dealing with injustice through that kind of restorative justice conference with all sorts of lesser cases than with the "I can't breathe" kind of case which is deadly serious but its going on all the time in this society and you can't confront it in court, because if that case goes to court, and during court the mother jumps up and says that, the judge, the magistrate will tell her to sit down, as it's not relevant. The mother will not be hard as she would be in the restorative circle. So yeah, I think there is something to offer there.

Lorenn (1:06:23): What do you guys think about the TRC? The Truth and Reconciliation- Do you think that would help us in the United States who suffer from a caste and racism system? Do you see Howard TRC's, like Faniass' work, what do you think?

Howard (1:06:51): I think it has a lot of potential, it's really hard to make it meaningful to get the people that need to be in it participating and involved it -but telling the truth and giving people the opportunity to tell the truth and being heard is a very important part of what needs to happen. I mean the model from South Africa is a fairly flawed model but it gives us some inspiration about how to go forward. there's some potential -it's not easy- the Canadians made some progress with that.

Lorenn (1:07:28): What do you think, John?

John (1:07:32): I'd agree with that. But, I'm sure there are other people that may have better things to add than me.

Howard (1:07:37): Yeah, same here.

Lorenn (1:07:40): Did you read *Caste* by Isabel Wilkerson? Its really powerfu--I was like so shocked and feel stupid--I didn't know a lot of the stuff--it was really shocking, stunning.

Howard (1:08: 03): It's on order at the library I'm waiting for it to come.

Lorenn (1:08:05): I'd like to have a palaver with you on that, Howard! Well, there's so many more questions, but I told Howard we wouldn't keep him that long. But do you want to wrap up? Maybe the two of you make a statement--say something, how this was, or anything you wanna about the future? What we should do or some good mentor advice--or any advice?

Howard (1:08:34): Well, I think it's just so exciting to see the many ways this is going. I mean, Who would imagine 40 years ago concept of restorative justice to talk about addressing the harm of slavery in the United States? And then racism generally, and policing and so forth? It's encouraging, and like any movement there's negative things. There are a lot of places claiming they are doing restorative justice that isn't restorative at all - that's going to be normal. I do want to say to all of us in the field- that in doing this we really need to be willing to listen to critics and to research. That's been the most discouraging thing- how many people feel like its such a beautiful thing, thinking "how could be anything wrong" and don't want to listen to our critics. Cathy Dailey- a colleague of John's has talked about how we just like to tell butterfly stories. Good stories, you know former students of mine used to say we need to balance the butterfly stories with bullfrog stories, we share those stories where things didn't go so well and see what we can learn from it. I'm encouraged by all the enthusiasm and imagination, at the same time I really hope people remain skeptical. I'd rather you be a skeptic than a true believer because it's really dangerous to be a true believer and not think as to what we are doing wrong. The peer review mindset, is a mindset that says I am open to other people and I am open to the fact that I may not be doing things right and I may not know everything.

Loirenn (1:10:32): That's great advice. How about you, John?

John (1:10:41): I notice there are a couple more questions that have come in and one more, Loirenn is sort of a rejoinder from Kazu, he says, we Japanese we have forgiven America for Nagasaki and the atomic bombs, and we forgive but never forget. My grandfather killed many Chinese in Nanjing and he received a medal from the emperor. I like my grandfather, and I am proud of him but--anyway you can all see the rest of the comments there we argue not for fighting but the betterment of the world. Well, I think that's a space where some kind of TRC [truth and reconciliation] process would be added, because while it's true the Japanese forgiving we on allied side--and there were Australians involved that operation--Australian soldiers sort of mopped up after Hiroshima perpetrated a lot of rape among the female survivors, which is a very shocking thing for us. We don't talk about it much these sort of things on our side need to be talked about more. There's also a false narrative of "Oh, it's a terrible thing but it's what we needed to do to win the war" and that's not really - very few historians believe that now. The Russians had already begun the process of invading Japan and that much more important factor the Anglo-Allies did not want the Russians to occupy Japan that was much more important. That sort of truth telling on our side has not occurred and there many levels that these things can be done. My father [garbled] was a survivor in Malaysia, and he was one of 6 survivors out of 2,500 Australian troops and we're doing a family reconciliation at the moment where our family and other survivors whose fathers committed suicide among the 6 survivors soon after they returned home and threatened children with their conflict trauma that the survivors suffered, meeting with the family of Japanese commander for the region who was executed in the Tokyo war crimes trials over the death march and they're very proud of their grandfather, too. We would say we're learning why they are proud and for very good reasons we're exploring issues at the moment like returning the family sword which was taken from him at the time that he was executed. There's a returning of the sword project in the US and in Australia and there's also local Malaysian families involved. There is a Malaysian key family who had 5 members beheaded during the Japanese occupation--and that's just this family. TRC process, healing process, where we on the Australian side also recognize the truth that when the Australian army re-invaded north Borneo, lots of Japanese were slaughtered--including in a smaller forced death march which is not part of our history of war. We need to listen to each other's history - that can deliver practical benefits, like, it's not safe or friendly for Japanese tourists family members who had members it's the tourism part of Malaysia it's really bad for the tourism industry and poverty reduction in Malaysia so that we see the reconciliation process as partially about opening the region up to Japanese tourism and healing so the war memorial celebrations, which Japanese people and families do not attend at the moment, so they can start attending these are little things we can do on family levels on big issues that normally get thought of on national truth and reconciliation processes

Loirenn (1:16:16): Thanks so much, John. Well. We're at an 1 hour 23 min for Howard, would [you] want to just close this palaver--say a few words?

Howard (1:16:54): Do you mean say a few words? Well, It's really nice to be able to do this. Zoom is one of the major, one of the pluses and weirdnesses to do this for people around the world. It's been an honor to be here, and John, I don't know when we can meet in person.

Lorenn (1:17:33): Thank you, we are going to have a conference on March 1-2, [2021 there will be an online conference on] restorative justice, re-entry, and corrections. So, we have some exciting people to present from all over the world and the work that they're doing. I just want to thank you Howard, and John you got roped into this today. You guys are two of my restorative heroes, and I think I'll try to get Sunny Schwartz to do one of these with us. It was great to see Sunny, Marian [Liebman] and Keyria [Rodgers], and everyone who was here today...just thank you all so much and we'll just keep plugging forward, try to be mentors, have mentors, and use peer review. Aloha, you guys are the gurus of restorative justice...ALOHA everybody.....thank you John, thanks Howard!