

From International to the Interpersonal; a Restorative look at Human Rights Conflict

By: Josh Davidson and Janelle Gilbert

As restorative practices have proven effective in many fields, including education, criminal justice, interpersonal psychology, and social work, there is reason to believe that such methods would be of value on a more international level, particularly with regard to human rights. All across the globe one can witness the tension that exists between promoting greater, more universal human rights and securing the traditions and values of given cultures. Both are worthy objectives, and it is wrong to think that universal human rights and cultural identity cannot coexist. Restorative practices, and especially the questioning that is such an integral part of the process, can serve as practical tools in creating a better understanding of the relationship between human rights and cultural appreciation, and in creating a greater transnational dialogue on how to cope with such important issues.

In much of the developing world, the promotion of human rights is seen as an affront to common practices and traditions that are unique to particular cultures. From female circumcisions to forced marriages, strict observance of *sharia* law to severe methods of capital punishment, many societies are prepared to confront the imposition of perceived 'Westernized' human rights. The four fundamental restorative questions can help to better understand this impasse while also providing unique approaches to fostering both human rights and cultural distinctiveness. Who is affected? What is the harm? How can we repair the harm? And how do we avoid future victims? Using these restorative questions not only raises awareness of these pressing issues, but also offers non-traditional ways to repair harm and restore societies.

Restorative practices are being used with greater frequency in post-conflict reconstruction efforts, both by national governments and non-governmental organizations. The success of the Truth and Reconciliation Commission in post-Apartheid South Africa spawned many similar national reconciliatory attempts across Africa, and such practices have also been attempted with varying degrees of success in the Central American states of El Salvador, Guatemala and Panama. However, one need not reach the point of national emergency before restorative practices and questioning can be of use; on the contrary, applying these techniques at an early stage reduces the chances of state failure and fosters cultural appreciation in and across state borders.

More often than not the international community views such issues and crises in legal terms; such conflicts, if addressed and/or resolved, are usually the results of multi-lateral treaties and international decrees based on moral imperatives. Like the humanistic disconnect between relational impact and criminal justice, international law focuses on treaty obligations and governmental culpability. Thus, the international community focuses on the legal aspects of a given issue – the degree of government responsibility, and personal accountability for such violations. Amidst vast national and international attempts to place liability on someone or some state, there is oftentimes neglect of the very people being harmed in such situations. Caught up in this maneuvering is the true human impact – what restorative justice calls affect – which, if continually neglected, festers and poisons both communities and nations.

In other cases, though human rights are guaranteed by international treaties, and though the United Nations Security Council and several international courts strategize to improve governmental accountability, oftentimes such human rights abuses are either misunderstood or overlooked. It is here – where law cannot adequately resolve human rights and cultural issues – that restorative practices and restorative questioning are useful implements for community restoration and conflict resolution. Restorative justice need not completely replace criminal and international justice, but can instead act as a constructive tool in fostering cross-cultural understanding and ethno-religious appreciation.

The following examples illustrate the value and effectiveness of using restorative questions to tackle international matters of human rights and cultural appreciation.

Restorative Questioning & the Plight of Stateless Persons

Who is affected?

Stateless people are not only those who lack a national identity or who are not recognized by any state government, but stateless people also constitutes those individuals who, while residing within the national boundaries of a sovereign state, cannot look to said state for the protection of rights and freedoms, nor the benefits normally associated with being a citizen of a given country. The issue of statelessness has gained greater transnational public acknowledgement in the last decade or so, most glaringly exemplified by the debate over illegal Hispanic immigrants into the United States, France's ongoing deportation of its Roma populations, or the continuing struggle for Palestinian refugees to gain freedoms and legal stature in the neighboring countries of Lebanon, Egypt and Jordan. Whether it be European Jews during the Second World War, the dozens of divergent ethnic groups that were separated from their state after the dissolution of the Soviet Union and then Yugoslavia, or the hundreds of thousands of individuals who have been uprooted from their homelands after violent conflicts in Africa, Southeast Asia, and the Middle East, these countless individuals lack any official state recognition and are without any political or judicial means to obtain fundamental human rights and socio-economic freedoms.

To personify this global predicament, one needs look no farther than Eidreiss al Salih, a Kuwaiti-born man of Sudanese immigrant parents. Kuwait never recognized his family as citizens, and when al Salih attempted to visit Australia in 2000 but was immediately detained, he realized that Sudan also refused to recognize his family as Sudanese citizens. As of 2004, and after several attempts to find his country of origin, al Salih remains in an Australian detention center where he awaits his appeals for asylum as a man without a state.

What is the harm?

As this description of the troubled efforts of Eidreiss al Salih depicts, the problems that stateless persons face is widespread, life-altering, and self-perpetuating. Unwarranted imprisonment is not the least of the worries faced by stateless persons around the world. As

Weissbrodt and Collins note in their scholarly report on this subject, “Stateless persons not only must deal with the challenges associated with being vulnerable targets for gross human rights violators, but also they must deal with the fact that, in many states, nationality is a practical prerequisite for accessing political and judicial processes and for obtaining economic, social, and cultural rights”.¹ Without any such socio-political inclusion, stateless persons are subject to discrimination in the areas of education, health services, employment, housing, and welfare, and the lack of documentation for such individuals results in their offspring being born stateless and without any substantial protection from governmental institutions. This notion of being born stateless can be seen in current attempts by more conservative elements of the U.S. Congress to amend the 14th Amendment so that children of illegal immigrants do not gain American citizenship.

On a more regional and even global level, the continued plight of stateless persons increases the risk of intra-state conflict and regional violence, as those without a state seek self-determination and struggle to achieve equal rights and freedoms. The continuing struggles of the Palestinians, Tamils, Kurds, Uighurs, and Chechens (to name but a few) to achieve national independence and self-determination is a direct result of the discrimination and alienation felt by displaced and stateless ethnic groups. As the events of 9/11 exemplified, the capacity for such violence to expand beyond its regional boundaries has increased, and statelessness thus constitutes a global dilemma that must be addressed.

How can we repair the harm?

From the Universal Declaration on Human Rights to the dual covenants on civil and political rights, and economic, social and cultural rights (ICCPR and ICESCR), and numerous more specific international declarations, there is an expanding international attempt to address statelessness and the rights of refugee populations. While the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness remain pertinent in international law, as of 2008 states party to such conventions remained at a diminutive 63 and 34, respectively. Without a more globally accepted de jure definition of statelessness, it is certain that the countless de facto stateless persons around the world will continue to suffer discrimination, political injustice, economic inequity, and ongoing human rights abuses.

How do we avoid future victims?

Addressing statelessness should be at the forefront of institutional policymakers around the world. To avoid the proliferation of statelessness, individual states must act unilaterally and preemptively, documenting and naturalizing children born into statelessness within their national borders, and attempting to incorporate the stateless individuals into their citizenry. This will prevent the expansion of statelessness around the globe, thus allowing governments to begin addressing the plight of the countless stateless persons already living unofficially within state borders. States must then begin a naturalization process of the undocumented peoples within their sovereign borders, attempting to incorporate them into the political and socio-economic structures of the state.

For its part, the United Nations must increase its monitoring capabilities with regard to the numerous human rights committees and relevant declarations, conventions, and treaties. The assertions of such conventions and the universal human rights therein, will never be realized unless the UN, and more specifically the Security Council, begins to demand transparency, compliance and respect for such fundamental freedoms for all of humankind.

Restorative Questioning & Prostitution/Trafficking

Who is affected?

In *Half the Sky*, Nicholas D. Kristof and Sheryll Wudunn describe the troubled life of a young Indian Muslim girl named Meena, who was kidnapped from her poor family living along the Nepalese border and sold to traffickers.² She was brought to a rural house where she was enslaved for many years, before escaping to a brothel in India where she was promptly beaten and raped into compliance. Meena estimates that in the dozen years before her eventual escape from this Indian brothel she was beaten an average of five days a week.

Meena's story is not unique. According to a U.S. State Department report, 600,000 to 800,000 people are trafficked over national borders each year, 80 percent of them being women and girls. In a 2006 *Foreign Affairs* article Kapstein finds that, adjusting for population, there are far more trafficked slaves in the 21st century "than [in] the Atlantic slave trade in the eighteenth and nineteenth centuries".³

What is the harm?

Upon her escape Meena found herself stigmatized and shunned in the community where she settled. Her life was complicated by illiteracy, and overshadowed by social stigma. Kristof and Wudunn describe how, when Meena was found by her former owners, she was forced to resume prostitution to pay protection money to her captors in order live on her own. Her children, a result of her forced prostitution, were kept as hostages to ensure her compliance. Her daughter was initiated into prostitution through drugs and violence once she showed signs of adolescence.

Forced prostitution and human trafficking have severe implications for the human species. In many parts of Africa and Asia women are considered chattel. Those who are not sold are withheld medical care. Those lucky enough to survive are left uneducated. Furthermore, their perceived lack of worth has significant consequences, and oftentimes has a direct correlation to poverty levels in lesser developed nations. Nobel Prize winning economist Amartya Sen estimates that 100 million women worldwide are missing due to violence and discriminatory neglect.⁴ Thus, such issues directly challenge any progress in the expansion of the rights contained in the Universal Declaration of Human Rights and other similar human rights treaties.

How can we repair the harm?

Education for girls, with families being financially compensated for good attendance, as well as job training and microloans for women, have bolstered cultural progress and increased the value of females in many societies. Though this is a good start, such programs have not yet been implemented in most impoverished countries. Local movements must be encouraged to challenge traditions that devalue women, and grassroots efforts should be taken to include females in national institutions and governmental organizations. Furthermore, nations must be encouraged to crack down on prostitution, reducing the benefits of such a business while increasing the fine for involvement, thereby making prostitution a bankrupt business country by country.

How do we avoid future victims?

Avoiding future victims of prostitution and human trafficking requires international efforts to disrupt human smuggling organizations, dismantle prostitution rings, and increase border controls in order to stop traffickers from transporting victims into neighboring nations. This requires both national and international efforts, and coordinated strategies for the abolition of such practices will lead to the greatest level of success.

However, the surest way to end human trafficking and unnecessary prostitution is to bolster grassroots educational programs that promote the socio-economic role of women in society and denigrate the notion that young girls can be unwillingly used for profit. Why should women be made to feel less valuable or less significant than men in a global economy that requires the full participation of all human kind? What are the cultural barriers to establishing equity between man and woman, and why have such prejudices lasted so long?

As is seen above, the detailed analysis of such human rights issues using restorative questioning is informative, thought-provoking, and has the potential to aid in the resolution of such crises. These are just two examples of many in which restorative practices can be used to examine issues and provide a better understanding of the problems that many around the world face. Restorative questioning not only illustrates the international and global dilemmas that such human rights abuses cause, but it clearly addresses the individual, communal, and ethno-national dimensions of such abuses. Using restorative justice techniques allows one to gain the perspective of all involved – whether it is the perceived victim of human rights abuses or the person who is attempting to maintain cultural traditions in the face of a more globalized world.

In the post-9/11 world, the international community is finding it difficult to apply historically successful methods of diplomacy and mediation in regions afflicted by ethno-religious strife and politically motivated violence. The diplomatic success stories of the twentieth century – the reunification of Germany, apartheid's demise in South Africa, the resolution of violence in the Balkans, and the end of Northern Ireland's Troubles, to name but a few – may not be possible using the same strategies and methods in today's world. While globalization continues to make the world a smaller place, the ability of nation-states to prevent violent

conflicts has declined, providing new opportunities for individuals and non-governmental organizations to better the world, one small step at a time. A more grassroots, community-based approach may be what is needed to bridge the gap between universal human rights and cultural individuality – and restorative practices have the potential to fill this very gap.

Sources

1. Weissbrodt, D. & Collins, C. (2006). The human rights of stateless persons. *Human Rights Quarterly*, 28:1. Johns Hopkins University Press: Baltimore.
2. Kristoff, N.D. & WuDunn, S. (2009). *Half the Sky: Turning Oppression into Opportunity for Women Worldwide*. New York: Vintage House.
3. Kapstein, B. (2006). The new global slave trade. *Foreign Affairs*, 85:6, p105.
4. Sen, A. (1990). More than 100 million women are missing. *New York Review of Books*, 12/20/1990.