

RESTORATIVE PRACTICES IN ISRAEL: THE STATE OF THE FIELD

Anat Goldstein¹
FGC Program Director, Ashalim²
Jerusalem, Israel

PLENARY SPEAKER, THURSDAY, OCTOBER 19

INTRODUCTION

The biblical statement “...An eye for an eye, a tooth for a tooth, a hand for a hand, a foot for a foot”³ is the archetype of retributive justice. This concept, known as the talion principle,⁴ was widespread in ancient times. Yet in certain situations biblical law allowed paying ransom, which could be perceived both as a retributive and as a restorative means. Later during the post-biblical period, in the first and second centuries, clear restorative rudiments were added: The community became involved in intermediating between the offender and the victim, providing compensation to the victim as well as protection to the offender from potential inappropriate revenge; an element of atonement was added, whereby the offender requests forgiveness from the victim and confesses before God, pledging not to repeat his criminal behavior. The atonement process was critical in bringing the offender back into the community.⁵

Today penal systems and criminal codes are to a great extent a means of addressing the offense between the sovereign power and the offender. Criminal law of the modern-day state



Anat Goldstein

of Israel, like most modern systems, is based on retributive concepts of justice and reflects the norms of Jewish criminal laws in only very small measure.⁶ Yet alongside the country's retributive criminal legal system, traditional population groups have long practiced restorative justice. Over the past 15 years restorative practices have also been introduced in the work of various Israeli government services.

Traditional restorative practices can be found in each of the three primary yet diverse traditional populations in the state of Israel: a) Muslim and Christian Arab, Bedouin and Druze minorities, which comprise approximately 20 percent of the Israeli population, b) Ultra-Orthodox Jews, who comprise close to 8 percent of the population, and c) Jews who immigrated from Ethiopia, who comprise less than 1 percent of the population.

In this presentation I will describe the traditional practices that are in use and will expand on the newly developed restorative practices in Israel.

I. TRADITIONAL RESTORATIVE PRACTICES

A. Among Arab, Bedouin and Druze

In Israel, as in other Middle Eastern countries, traditional informal processes of restorative justice exist alongside the criminal justice system. The most commonly known is called *Sulha* (peacemaking). Today it is used much less than before the establishment of the state of Israel 58 years ago, yet it still prevails among the Arab, Druze and Bedouin minorities. *Sulha* is used in cases as simple as small disputes, as well as in the most difficult criminal offenses, such as murder or severe corporal damage. In severe cases, *Sulha* is put into motion to prevent a blood feud. A *Jaha* group—a group of respectable community leaders who practice peacemaking—conducts the *Sulha*. The *Jaha* group mediates and arbitrates between the family, village or tribes of the offender and that of the victim. The first stage is discreet, secretive shuttling. In severe cases, at the time of the preparations a *Hudna* (cease-fire) could be declared. The *Jaha* has to secure the cooperation of the two

sides. The *Jaha* makes the decision regarding the amount of compensation, guarantees the parties' consent to the blood money and secures the support of the community leaders. Only after that can the *Sulha* ceremony take place.

Elias Jabbour, founder and director of the House of Hope, an international peace center in the Galilee, describes the *Sulha* ritual in his book.⁷ Between one and two thousand people from all over the country are invited to the ceremony, which is conducted in the morning, at an open space. The public proclamation of the *Sulha* is very important. The bereaved or hurt family sends a white flag with a knot to the offender to show their resolution to forgive him. The delegation ushers the offender (or his representative if he is incarcerated) under the white flag. His relatives, the *Jaha* team and other prominent leaders accompany the offender. Then the offender and his relatives shake hands with all the people on the victim's side. The notables are then invited to tie their knots to the white flag, and the formal speeches follow. The speeches are short, few and very calculated, as the situation is extremely delicate and volatile. At the conclusion of the speeches, the victim's family invites the offender's family to their home for coffee. The ritual is not concluded until the victim's family eats a meal of lamb and rice in the offender's home.

The relationship between the legal criminal procedure and the *Sulha* process is not regulated. The *Sulha* can be done alongside the criminal court proceedings, and often, when a *Sulha* plan is brought to the judge the court adopts it. But on many other occasions, the *Sulha* plan is not brought for confirmation by a judge. In such cases disturbances can arise, which then serve to widen the rift between the minority population and the state.

Today women are not allowed to participate in *Sulha* meetings, nor can they be on a *Jaha* team. Sometimes they operate behind the scenes, however. This is in spite of the fact that the majority of the victims are females. Yet only a *Sulha* can stop vicious cycles of killing that may otherwise continue for many years, taking many lives, regardless of the sentencing of the state's court.

B. Among Ultra-Orthodox Jews

Restorative practices also can be found to a smaller degree among Ultra-Orthodox Jews. Rabbis judge, mediate and arbitrate in civil disputes, and to some degree in criminal cases. Today there are some new attempts for collaboration between rabbis, the police, child protection services and the attorney general. In one Orthodox Jewish city in Israel, rabbis have sex offenders sign a confession of their crimes, with the consent of the above services. As long as the offender goes to therapy and cooperates, the case is not reported to the police and criminal charges are not pressed against him. If the offender does not cooperate his signed confession is used against him. This method helps both to get the sex offender to therapy and to gain the consent of the victim's parents to uncover the sexual abuse. Otherwise parents tend not to report the abuse for fear of hurting the chances of matchmaking for this child and his or her siblings.

C. Among Jews Who Emigrated from Ethiopia

Before coming to Israel, the Jews of Ethiopia relied upon their leaders to mediate or arbitrate between the offended and the offending parties. This role was called *Shmagletz* (in Amharic). However, their status declined with the immigration to Israel. Over the past ten years, the Israeli Ministry of Immigrant Absorption, the police and social services have been trying to reestablish the role of *Shmaglot* (mediators/arbitrators). Cooperation between *Shmaglot* and the police has already helped resolve difficult disputes and defuse tension in critical situations between immigrants from Ethiopia and the establishment.

II. MODERN RESTORATIVE PRACTICES IN ISRAEL

Experimentation with restorative justice practices is relatively recent in Israel and follows the implementation of civil mediation. Both restorative practices and civil mediation were implemented from the top down. Civil mediation was initiated and given the push by the Ministry of Justice and the Supreme

Court in the 1980s. About a decade later, the Juvenile Probation Service (JPS) in the Ministry of Social Affairs pioneered the use of restorative justice and was later joined by other governmental services and NGOs. The JPS paved the way for the future developments of restorative practices in Israel, which I will describe.

1. Restorative Practices in the Juvenile Probation Service

The Juvenile Probation Service allowed probation officers to start experimenting with VOM—victim–offender mediation. Later this service was the moving force behind the introduction of FGC—family group conferencing—in Israel.

A. VOM—Victim–Offender Mediation

Fourteen years ago in 1992, the JPS initiated the process of victim–offender mediation. VOM became a part of the psychosocial investigation and the decision–making process regarding indictment. Rachel Sharvit, head of that region, and JPS worker Sarai Garbeli introduced it in the southern part of Israel. Three years ago when Sharvit became the head of the Israel JPS, VOM was disseminated countrywide. The rate of referrals to VOM grows yearly. *In 2005 approximately 200 cases were referred, of which 90 were completed, with 150 young offenders taking part.*

B. FGC—Family Group Conference in Youth Justice

After exposure to New Zealand’s family group conference, a pilot project, FGC in Youth Justice, was launched in 1999 in Israel. While VOM developed as an internal initiative within the Juvenile Probation Service, FGC in Youth Justice was a joint endeavor of different governmental offices.

It began with the establishment of a national steering committee with representatives from: the Juvenile Probation Service and the Legal Adviser’s Office, of the Ministry of Social Affairs; the Attorney General’s Office, the State Attorney’s Office, the National Center for Mediation and Conflict Resolution and the courts directorate, of the Ministry of Justice; the Office

of the Chief Scientist and the Legal Adviser's Office, of the Ministry of Public Security; the youth department, the Legal Adviser's Office and the Police Prosecution Section, of the Israel Police; and two NGOs—Keshet, the operating NGO, and Ashalim, which helped with the planning and development.

The steering committee and its operative committee have met repeatedly for the last seven years. The multitude of partners with different agendas made the project progress at an extremely slow pace. These committees reviewed every stage of the project. The committees established the infrastructure for the pilot project and, after long debate and consideration, made decisions regarding the terms and the flow of referrals. They determined the specifications and requirements of the coordinator's position, chose specific locations for the pilot project and decided to implement FGC in the pre-indictment stage. *From 2000 when the first case was referred, until the end of 2005, approximately 300 cases were referred, of which about 150 were concluded with FGC meetings and plans.*

At the end of 2004, the director-generals of the Ministry of Social Affairs and the Ministry of Public Security adopted FGC in Youth Justice as one of their methods to deal with young offenders. Ironically, the embrace of the government almost stopped the progression of the project for over a year, because of a new requirement that NGOs tender a bid to operate the project. *More details on the pilot project and a summary of the evaluation findings can be found in a recently published article.*⁸

C. FGC at Other Junctures of the Criminal Proceedings

In 2001, following the pilot project, FGC in Youth Justice, the JPS started two variations of FGC at other crossroads of the criminal proceedings: FGC for building alternatives to juvenile detention and FGC as a recommendation to the court.

FGC for Building Alternatives for Juvenile Detention

FGC for building alternatives to juvenile detention is a partial restorative practice, without the victim's participation

and without the offender's admission of guilt or responsibility for the offense. The procedure of this FGC is similar to the FGC for child protection in the welfare services (also referred to as FGDM—family group decision making—in the USA). This FGC is operated in cases where a youth is arrested and his/her release might pose a danger to the community or to the youth. Its purpose is to construct a plan of house arrest that ensures 24-hour out-of-prison supervision until the court hearing. The extended family is gathered from all over the country within two days to a week of the arrest. The plan that the family conferencing agrees upon is brought before the detention judge. This conferencing strengthens the family; it protects the community from more crimes and reduces stigmatization by keeping the youth out of jail. In the majority of cases the judges approve of the FGC plan and the young offender and family manage to fulfill the FGC alternative plan for detention. *In 2005, 180 FGC for detention alternatives were completed, representing close to 100% of the referrals.*

FGC as a Recommendation to the Court

FGC as a recommendation to the court, similarly, is done without the victim's participation. It is held in the pre-sentencing stage of the trial. Probation officers from the JPS, whose role is to submit recommendations for treatment, rehabilitation and punishment to the court, have started in the last few years to refer a growing number of cases to FGC. In those cases, the plan of the young offender and the family is submitted to the judge as part of the JPS's recommendation. The JPS director of this FGC variation told me, "I used to believe that I submit recommendations to the court that are tailor-made to the youngsters. Now that I see the very specific and really tailored plans that families construct, I am ashamed at how I dared call the plans I built 'tailor-made.'"

In both FGC variations, a specially designated probation officer functions as a facilitator while the youth's probation officer participates as a professional. In these two FGCs, unlike FGC in youth justice, police officers do not take part. These

mostly restorative processes are similar to the FGC for child protection (discussed below), which adapts the concept of identifying the strengths of the young offender and the family before expanding on the concerns.

Youth probation officers who took part in FGC and VOM processes report that they have better relationships with the offender's family. They experience more empathy with the parents and say, "FGC creates real partnership with the family." To illustrate the effect of the process, see a letter by a young offender's sister to the judge, in the appendix. *In 2005, 250 cases of FGC as a recommendation to the court were concluded, very close to the total number of referrals.*

2. Restorative Conferencing in the Adult Probation Service (APS)

The Adult Probation Service (APS) began to study the issue of restorative justice, establishing a steering committee in 2001. It took around four years for the first case to be referred. They chose to start with victim-offender mediation (VOM), built a training program and trained probation officers to be VOM facilitators. Similar to the JPS, an APS special worker acts as a facilitator for another probation officer's case. They encourage supporters of both victim and offender to attend the mediation. For the mediator's role, senior supervisors were chosen. The plan is primarily aimed at repairing the harm to the victim without the rehabilitation of the offender. As in mediation, the offender's probation officer does not participate, nor do other professionals.

In Israel, the Adult Probation Service receives cases only after indictment. (Juveniles, on the other hand, are referred before charges are pressed.) Therefore, the APS makes sure they let the court know of the referral to the VOM. *The first referral was in 2005; of the approximately 110 referred cases to date, 30 were completed with a restorative plan.*

3. FGC for Juvenile Prisoners

In 2005, a pilot project, FGC for Juvenile Prisoners, was

launched in the only prison for youth in Israel. It started as and still is a partially restorative practice, which involves the nuclear and the extended family of the young prisoner in building the rehabilitation plan for his release.

The partners in the project are: the Prison Service and the Legal Adviser's Office, of the Ministry of Public Security; the Authority for Released Prisoners' Rehabilitation, of the Ministry of Welfare; the FGC Association for Child and Youth; and Ashalim Association.

The prison authorities have the prerogative to allow the inclusion of the victim or not. Three months before the young prisoner is to be brought in front of the releasing committee, the prison's social worker, together with the post-prison rehabilitation worker, can offer FGC to the young prisoner. In the first year since the project's inception, 12 cases were referred, nine of which were carried out successfully. In only one case did the authorities approve the option of inviting the victim to take part in the FGC. However, this was a case of a brutal, senseless attack, which almost cost the victim's life. Calling the victim's parents and telling them about the FGC process traumatized them all over again, and they refused to meet with the FGC coordinator to hear about the conferencing. They considered it to be a prisoner-oriented process and did not want any part in it. *In 2005, 12 cases were referred, six were concluded, only one with victim's participation.*

4. Initiatives by the Ministry of Justice

The National Center of Mediation and Conflict Resolution of the Israeli Ministry of Justice was established in 1997 in order to promote dispute resolution in our country. Its founder and first director, Dr. Peretz Segal, started a unit for restorative justice alongside that for civil mediation. Anat Farkash, the head of that unit, invested time in studying the theories and international experience of restorative justice and published a book surveying the field, in Hebrew.⁹ This unit's task was to expose governmental offices involved with criminal law to restorative justice. They recruited ten NGOs and taught them how

to establish community centers for restorative justice. They set up two committees to establish criteria for and determine qualifications and training requirements of restorative justice facilitators. The National Center for Mediation offers ongoing group supervision to facilitators of VOM and conferencing.

5. FGC in the Youth Protection Authority

In 2005 the Youth Protection Authority in the Ministry of Social Affairs, with the help of the FGC Association for Child and Youth and Ashalim, began to use FGC in their residential facilities. FGC is offered to a youth and his or her parents to help with discharge from placement and to develop permanency and visitation plans. During the first year about 20 cases were referred, but many fewer continued or concluded with a FGC meeting. *In 2005, ten cases were referred, four were concluded.*

6. FGC in Child Protection

A pilot project, FGC in Child Protection, was carried out for two years starting in 2000. It was operated by the Child and Youth Service of the Ministry of Social Affairs and the Ashalim and Keshet associations, but it was terminated when the pilot's budget ended. In spite of constructive results and positive participants responses, the pilot did not provide sufficient evidence of the value of the approach because of the small number of cases. In 2005 there was an attempt to revive FGC in Child Protection. But bureaucracy stands in the way, and this project is at a standstill. *Between 2001 and 2003 approximately 30 cases were concluded out of about 40 referrals. In 2005 three cases were handled with no continuation.*

7. FGC in Fierce Divorce Battles

The use of FGC in cases of bitter, never-ending divorce fights seems to be the most complicated. The FGC divorce initiative came from the Community and Individual Service division of the Ministry of Social Affairs. The pilot project, FGC in Child Protection, inspired hope that involving the extended family could help moderate the fighting and hostility between divorcing

parents. In mid-2005 we started experimenting using FGC with these cases. Within one year less than ten cases were referred. Most of the referred cases were unsuitable for mediation. The fighting partners generally did not allow family members and other people who were significant to them to join in the process. When they did consent, the people who joined mostly succeeded in adding fuel to the fire. The hard part, as in all new development, is to get professionals to make referrals to FGC. When a case is simple, the child protection worker asks, rightfully, “Why refer?” When the case is very complicated, it is inappropriate for mediation or for FGC. Nonetheless, we are giving it a chance for another year of learning before we draw conclusions.

8. FGC in Schools

Negotiations with the Ministry of Education regarding a pilot project of FGC in schools have been in effect for the last five years. Different departments in the ministry pass the ball from one to the other. A preliminary stage of feasibility testing was done five years ago, but today the proposed pilot project is still at the stage of reaching agreements and planning.

SUMMARY

Restorative practices made their way into Israel’s criminal system 14 years ago. Yet in many respects we are still learning how to adapt them to Israeli society and government services and implement them most effectively. While Israeli society as a whole thinks more in retributive terms than in restorative ones, a growing number of people have adopted the language and the spirit of restorative justice and are making efforts to disseminate restorative practices in the relevant government agencies. Today restorative practices for juvenile offenders are being implemented throughout various stages of the criminal process—from the time of arrest, prior to indictment, during court proceedings and before release from jail. Other governmental agencies are learning from the experience with juvenile offenders and are introducing restorative practices for use with other populations.

APPENDIX

A letter from a young offender's sister to a judge after an FGC:

Your Honor:

I know that the serious offenses that my brother committed are being brought before you. We thought it proper for me to appear before the court today and describe to you what our family and my brother have gone through over the past two months.

Two months ago a Family Group Conference (FGC) meeting took place in which all the members of our family participated. Brothers, sisters and uncles met together with the youth probation officer, attorney, school principal and homeroom teacher.

The meeting had four parts:

Part I: The youth probation officer opened the FGC meeting and told all present of the offenses my brother committed previously and at that time (hopefully not in the future). I must note that for some of the family members this came as a complete surprise, which led to a major outburst. Many of the family members were unaware since my mother continually hid information with explanations that she didn't want to bother or trouble other family members since we were busy raising our own families, or other such claims. My brother told us why he committed the offenses and how he got to this point altogether. Needless to say, he admitted his deeds and took responsibility for them.

Part II: Family members responded. We expressed our feelings about what we had just heard. Each of us described our emotions, and here there was an outpouring of sadness. We all just wept. Family members expressed a desire to know everything and, of course, to offer help and support.

Part III: The professionals at the meeting explained to my brother and to our family their concerns going forward and gave us practical tools to improve the situation.

Part IV: Our family was left alone with my brother,

and together we put forth ideas and suggestions to help my brother move forward. In this way, we created the program that is being presented to the court today.

Your Honor, I would like to say that today we are a much stronger and smarter family. We have the strength to lift my brother up. I think we are on the correct path. We are all partners to the process. We explained to our mother and to my brother that we are here for them and that we want to know everything. That is how it is today.

Please give us the chance to prove that we are on the correct path and allow us to help my brother rise out of his current situation. We respectfully request to postpone his sentencing for six months, so that the program we have designed can be fully implemented.

I would also like to express our utmost thanks to the youth probation officer for everything.

Postscript: The judge accepted the family's request and delayed the sentencing. Six months later he reviewed the FGC plan and accepted it. The plan included: family supervision of the youth, volunteer work for the community and a course in life skills. From age 14 to 17 the youth was involved in criminal activity. It is now a year since the FGC meeting, and the youth has not committed an offense.

ENDNOTES

1. Anat Goldstein, FGC Programs Manager, Ashalim. anatg@jdc.org.il
2. Ashalim—The Association for Planning and Development of Services for Children and Youth at Risk and Their Families. Established by JDC–Israel, and supported by UJA–Federation of New York and the government of Israel.
3. Ex. 21:24, Dt. 19:21.
4. “Latin *lex talionis* principle developed in early Babylonian law and present in both biblical and early Roman law that criminals should receive as punishment

precisely those injuries and damages they had inflicted upon their victims.” *Encyclopaedia Britannica Online*.

5. Mishna, Baba Kama 8:7.
6. Segal, P., Restorative Justice in Jewish Law and Present Israel. In: Albrecht, H.J., Simon, J.M., Razaei, H., Rohne, H.C. & Kiza, E. (Eds.), *Conflict and Conflict Resolution in Middle Eastern Societies—Between Tradition and Modernity*, Max-Planck-Institut, Dunkcker & Humbolt, Berlin, (2006). pp. 525–534.
7. Jabbour, E.J., *Sulha — Palestinian Traditional Peacemaking Process*, House of Hope Publications, Israel (1996).
8. Goldstein, A. Family Group Conference (FGC) in Youth Justice in Israel. In: Albrecht, H.J., et al (2006). See no. 5, pp. 493–506.
9. Farkash, A., *Restorative Justice in the Sphere of Criminal Law*. The National Center for Mediation and Conflict Resolution, Ministry of Justice, Israel (Hebrew, 2002).