

Episode Eight: We're Genuinely Trying to Repair That Harm

Herbert: If they're expressing to us some emotional reaction to what we've done, what are, do we have obligations to them, or should we feel some sense of obligation? What should be our response?

I'm asking the class one morning about what we owe people when we wrong them.

Moustafa: I do believe that we have a sense of obligation, because going back to the study of restorative justice and how the community can be portrayed as something like a spider web. And each connection between the members of the community constitute a strand of that web. So when a violation occurs, when you hurt a person, you break that connection. And you have to re-connect, so to speak. So when you violate a trust, when you violate a person, when you violate a moral code, you are thereby, being a member of society, being a member of the community, you are thereby obligated to make right. And if you're really in touch with your humanity, that's the conclusion that you're going to come to, that you have to make right. That what you did was wrong and you have to make right to the most degree possible.

Moustafa is like a lot of incarcerated people in his desire to make right. And he and others wish that their victims knew that.

Herbert: So you think the victim's healing will be enhanced if they know that you've recognized the harm and you are trying to atone?

Terrence: Yeah, I mean, I think of Anthony in his situation. The mother of his victim or whatever, she didn't really seem like it was like, "You're a monster, you're this, you're that and everything else." We accept you or whatever, or you know, we understand. That just shows compassion. "Yeah yeah, you were a kid, a dumb kid, you messed up, you caused something very, very big. We get that. But we also understand that you were a kid and our son was a kid and he could've been in your shoes easily. It's better that we see you grow into a mature man, a productive man, than for you to just go to prison and just rot away. "

Herbert: Does that resonate with you, Anthony?

Anthony: That's my story. (Everyone laughs). Yeah my victim's family said they didn't want me to get this time. That came out of their mouth at sentencing. They said they felt it was an injustice that I was getting 25 to life at that age. But you know, mandatory minimum in this state. Yeah, I took something from them that can never be given back. But obviously somehow on their end through that process -- they heal on their own and then being able to express what they expressed to me in the courtroom. Later on, many years in life, when I was able to reflect upon that, it helped me heal.

Herbert: And today would you, would it be your hope that they somehow know?

Anthony: Absolutely.

Herbert: Is there any mechanism for you to convey to them or anything about who you are today?

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Anthony: No. Not until they come to my parole hearing. If they can come. If they're still alive. I don't know.

In our last episode, we explored the consequences of our adversarial criminal justice process, which pits the state against the alleged offender. We also explored the consequences of our highly-punitive sentencing structure, which demands very long prison terms as retribution for a conviction.

But what if we had a system that was more restorative in its approach? What if we had a system in which victims and prisoners had more consistent and constructive dialogue with one another? What if we encouraged prisoners to take accountability not by sitting in a cell, but by working hard to understand the consequences of their mistakes?

This is Making Amends. I'm Steve Herbert. I used a rare degree of access to the Oregon State Penitentiary to explore how many prisoners deal with the past and how they search for a way to atone.

In this episode, I want to explore how a restorative justice approach might work differently than our current punitive one. I want to consider whether both victims and perpetrators might benefit from communicating with one another, and whether we can create environments where convicted criminals more actively assume accountability for the wrongs they committed.

Episode Eight: We're Genuinely Trying to Repair That Harm

Moustafa: There's an obligation on the part of the criminal justice system and the state to facilitate something that can give the victim an opportunity to hear the offender. As we speak right now, it's all about retribution.

When Moustafa suggests a turn away from retribution and toward victim-offender dialogues, he's making a case for an approach commonly labelled as restorative justice.

Katherine Beckett: So, restorative justice is basically the idea that rather than focusing on guilt and legal punishment, one should focus on the harm that occurred, and what can be done to remedy it as much as is possible.

This is Katherine Beckett, my colleague at the University of Washington in Seattle.

Beckett: So, the focus shifts from the legal question of guilt rather to what happened, how has that affected the person who's been harmed, and what can the person who caused the harm do to make things better. And so, it lends itself to a very different kind of intervention and response to wrongdoing.

Herbert: The individuals that I've met in Oregon, they talk a lot about just the initial framing of their case as the State of Oregon against them, and the ways in which that sort of structures the way they think about what they've done and, at least in the immediate term, how they have to somehow defend themselves against the state. So, it sounds like restorative justice kind of redefines the way the whole thing is understood from the very beginning.

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Beckett: Yeah, it sort of flips it on its head and says, “Don’t participate in this process by protesting your innocence, but rather take responsibility. Own up to what you did. Really sit with what that meant for someone else. Feel that, and then figure out with us what you can do to make things better.” It’s a really different, I think, posture that it invites the person who caused the harm to be in, in the process.

Herbert: So, in some ways they’re invited to embrace accountability rather than sort of defend themselves against that label.

Beckett: Precisely. And I think they pretty quickly understand why that’s good for them to take accountability, why that’s helpful to other people, and helps create peace and more resolution.

Steve agrees with the idea that the adversarial system did not encourage him to take accountability at the outset.

Steve: When you're going through trial, especially if you don't know what's about to happen, the last thing you're really thinking about is emotional obligation. You're thinking, us vs. them, you're getting your discovery, you're seeing who snitched on you, trying to suppress that. So, you never think any of that stuff. I never did, until way later in life. Until maybe in my 20's. You get an empathetic brain I guess when you get older. You start to think, like, a little bit outside that box.

Moustafa: We think that most victims want revenge and vengeance, but a lot of them just want some answers, just want their questions answered. They want their voice to be heard. They want a sense of empowerment. They want to come face to face, and know why, you know. And that's where restorative justice comes into the picture. And then some might say that by doing so, the perpetrator is getting off easy. I can assure you that there's many, many people who would rather do a prison sentence than come face-to-face with the person they hurt and sit there and have to answer their questions, because that's a very emotionally daunting situation.

An emotionally daunting situation, perhaps, but one that members of my class would embrace.

Herbert: Do any of you imagine how, if you were able to tell your truthful story that that might impact positively your victims? Do you ever imagine what that conversation might be or look like?

Anthony: I think the ability to have the option is what’s important and what’s powerful for the victims, because some victims don’t want to talk to you and their coping mechanism is hating you. I mean, everybody deals with things differently. Some victims want to know, they’ve got a billion questions and want to know and right now they don’t have the ability to find out. But I think just having the system in place where it’s available is what will be so powerful and impactful for the victim’s healing process. Just to know that, ok, maybe I am

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angry right now and I don't ever want to see this bastard again. But then sometime down the road, they know they have the ability to say, "You know what, now I want to know."

Theron: Answering any unanswered questions that's been lurking or just giving a new perspective of my thoughts of the crime. You know, I think that's important, because they don't really know how we respond outside of the criminal justice process. They don't know about the compassionate person, they don't know the story, they don't know there's more to it than the minutes that happened of the actual crime that took their family member away. They don't know about who you are as an individual. And I think just understanding, I think just giving them that part of humanity can make a difference in their own hatred or just their understandings of why they hate you so much. And I just think they deserve better.

Terrence: I would love to get a chance to you know sit down with my victim's mom and dad, especially his dad. I'm assuming that you know that they have a bunch of questions for me, some anger for me and whatever else they might be feeling and what not. Just to give him the opportunity to understand why it took place. That it's not what the DA told you why it took place isn't really accurate. So this is why it took place or what not. Maybe they need to hear that maybe they don't but just to give them the opportunity

Theron: We don't want to hurt the victims. We don't want to! There's ways that we can do this. I honestly believe that there should be more victims' advocate groups and prisoners doing workshops. I believe that, because there has to be the education that there's some of us in here, there's a lot of us actually, who want to bridge that gap. But we're afraid to build that bridge and how do we build that bridge?

Moustafa: A lot of the men in here are frustrated because we don't have a platform to convey our apology.

Herbert: So why would having your apology heard be meaningful to you?

Moustafa: For most of us, we're sitting here knowing that the people that we hurt are mad and upset and hurt and they think that we're never gonna change and they think that we're just bad people and they think that there's nothing good that can come out of us. That's not the reality, that's not the truth. We might have done something wrong in our life, but that does not reflect who we are as a person. That's been a long time ago and most of us have made strides and changes, but they don't know that.

Herbert: Maybe another way of understanding it, and tell me if this is wrong, is that you feel a desire presumably to re-connect to the community, saying, "Okay, I screwed up, I caused harm, I'm doing everything I can to atone for that. I would like to be recognized, and in effect kinda welcomed back into the community of morally responsible people."

Moustafa: We do have that need, we do feel that way. Like if they look up any of our names none of the things that we have accomplished over the past X amount of time is going to be mentioned. The only thing that's going to be mentioned is the most negative thing about us, you know. And it just, it just, it just, it doesn't sit right. Knowing that that's what the world knows of us.

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Theron: It's about two human beings, or human beings sitting down and understanding and acknowledging a harm that's been done and how that harm, that violation, and letting them know that: I'm sorry. Not only am I sorry, this is what I've been doing to be actionable with my sorry. This is how I'm doing my sorry.

Herbert: But that's a truer measure of accountability in your view? Than just doing time.

Theron: Yes.

So, the men in my group would prefer to be held accountable through more than just doing time. For them, making amends means acknowledging the harms they've created, and doing so as directly as possible, ideally with their victims. This, for them, is what it means to pursue restorative justice.

This term, restorative justice, is an important one at the Oregon State Penitentiary. It's a catch-all phrase for a range of classes and programs, all of them run in the chaplain's area of the prison, up on the fourth floor. Steve is one of the newest members of the restorative justice community.

Herbert: So when did you start coming up here?

Steve: I've kind of been up here, I'd taken a couple classes up here. Just kind of getting me around. And then different people have told me about what's going on up here. Actually before that riot, I'd come out to a couple things up here too for restorative justice, but as far as this class, recently.

Herbert: Interesting. So what's the attraction?

Steve: I don't know, just to learn. It seems like the most amount of changes happening in this prison system, seems like it's more, has more of a real life effect, that's happening up here. But up here it seems like they're trying to actually make a difference.

Herbert: And how do you see that?

Steve: Some of these classes in here, what they're talking about, and hearing like some of the professors up here. Like I can see inside myself that I'm a completely different person than I was, and this is the only place I really found that.

Like Steve, Cameron has a history with racially-defined prison crews. Both of these men are white, and thus historically would not co-mingle with prisoners of color.

Cameron: Everything in prison is defined by race, for whatever reason. Chow hall is racially segregated. Who you work out with has to be racially segregated. Who you live with. In the day room, there's the black chairs and white chairs and Mexican chairs, you know. Showers at most prisons are racially segregated. Just every single little aspect is racially segregated. And when I came in as a kid, I really just drank the Kool-Aid on everything, you know. This is what we did, alright. This is what it is. I just never questioned it before. And when I talk

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about the moral aspects, you have to decide for yourself, that was such a big deal. When I actually started questioning that, like, why would I hate this guy or not do something with him just cuz, like -- shouldn't I base it on his integrity as a man, on like who he is as a person, you know? And I just started questioning everything. And I came up with my own answers.

Herbert: So, like the moral choice to judge someone based upon their race?

Cameron: Yeah.

This led Cameron to find a different sort of community, on the fourth floor. He recalled a moment when he was on the floor, and fell into a conversation with two other prisoners and a Jewish chaplain.

Cameron: I always had the community up here from the first day I came up here. They were very welcoming to me. And it's funny, one day I was up here, just hanging out, and I just remember, like, feeling a super strong sense of community and camaraderie with them. And I just found it funny, like, it was rare that I ever found that on the yard. But up here with these guys that are seemingly, you know, I'm a white guy, they're two black guys and a rabbi, and with them I felt a strong sense of community and purpose and just a good feeling. And I'm not going to say I never felt that on the yard, but I rarely, you know, that was a rare thing to find anywhere. But it felt good that I could still have that community and that feeling, but in a positive action. While pushing positivity out there, I could still have that community.

This sense of positive community is widely shared.

Moustafa: I think most of that code, at least prison code, kind of, sort of thrown out the door the moment you step into a restorative justice environment. And that's the power of that environment, is that it enriches and it encourages you to cultivate your inner self and discover who you are and discover what you got in common, more so than what you've got different with other people.

Theron: We're all here to learn and build off each other. We're here as a team and we're here as a group trying to build and figure it out. Because none of us have it figured out. Not one of us in this room have it figured out, you know what I mean? But we're here to promote and empower each other and I think that's the element that you have to understand because that vulnerability -- is because you can be vulnerable. Because we're all trying to put ourselves at the mercy of vulnerability, so we can actually be honest with ourselves. Hopefully you'll walk away with something, I'll walk away with something. It's like, "Yeah, I was able to be honest today".

Cameron: And I think a lot of it is just being able to identify with someone. So a lot of that's being close to them, having discussions. Letting a little vulnerability come out, it's accepted, you let a little more come out, you know? In this place where so many people are motivated to do negative things, we come together to be positive. And that gives us a certain camaraderie right there and community.

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As Anthony pointed out, creating a community like this throughout a large institution like the Oregon State Penitentiary won't necessarily be easy.

Anthony: Especially with a lot of the younger generation and sometimes old fools, certain things aren't cool. Changing isn't cool. Education isn't cool. And so, that's a stigma attached to what a lot of the stuff that we do in this room is like: oh, that ain't cool, because sometimes people feel uncomfortable because they've never been exposed to it. Whatever the reason is right? They'd rather play sports, that's cool. They'd rather go work out, that's cool. They'd rather hang out and play dominos, they feel that's cool. But, when we can change the definition so-called of what's cool, because it's a different value system, then more people start getting interested in it.

Cameron believes that the key to changing the prison culture is to lessen the distance between the outside world and what he calls the kaleidoscope world of prison.

Herbert: Why the metaphor of a kaleidoscope?

Cameron: Because it's twisted. Nothing's right, you know. When you forget that there's something outside these walls, this becomes a very different place. And for a lot of years, I forgot there were things outside these walls. And that's when I became violent and animalistic and had no empathy and everything else, because those were assets in here. But the best way we can figure to change this into a more transformative environment is to make it from the day you come in, you're thinking about the streets. You never forget about your daughter or about your nephew or about your girlfriend, you know. You always remember that out there, and you're constantly working to make yourself the best you can be once you get there.

But how easy have we made it for people like Cameron to remember life on the outside? Has our addiction to incarceration allowed us to forget those we've locked up, and to ignore the changes they've made? Can we learn to recognize ourselves in those we've confined to prison?

Linda Radzik: Think about the worst thing you've ever done, right. Maybe you've betrayed a family member or let a friend down or something like that -- one of these wrongs of everyday life.

This is Linda Radzik, a moral philosopher at Texas A&M University.

Radzik: And think about the fact that most of our answers to what's the worst thing you've ever done aren't even crimes. And a lot of things that are crimes are a lot less serious than the worst things we've ever done to one another, right? So if you've let down a family member who's now passed on, a lot of us are in this same situation of needing to make amends, wanting to make amends, and tragically being unable to do it fully.

Herbert: So I guess the thought experiment there is to, if we recognize the wrongdoing that we ourselves are capable of, then that makes it easier for us to imagine, I guess, being in prison, for lack of a better way of putting it.

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Radzik: Right. And also to imagine this experience of having done something that you can't take back. And now it's in the past. You can't go back and change the fact that you did that thing. And so hopefully, if we think about what it would be to make amends for the wrongs all of us do in everyday life, then we can have a kind of sympathy for that as part of the human experience that criminals are also facing. Their wrongs are more severe maybe, but it's not as if they're a different kind of creature than we are.

Sitting in that library on the fourth floor of the Oregon State Penitentiary each Tuesday morning, I did not experience myself in conversation with people who are different from me. If anything, I felt inspired by people taking an honest look at themselves, and recognizing their imperfections. Unlike those of us on the outside, they are reminded daily about their worst mistakes. As easy as it might be to simply serve out their time, and to sit around and complain about a criminal justice process that does not always treat them well, these men work to become the best version of themselves.

Herbert: So then if I hear you correctly, then it takes a while. You have to be incarcerated, you have to get over your anger over the way in which the system has operated. Maybe you got more time than you think is legitimate -- I shouldn't say maybe -- you very likely got more time than you think is legitimate. And so if I hear you correctly, the process of really taking responsibility is all the harder.

Theron: It's the harder, but I think it's that more important, because you genuinely wanna change. Like, it's like it's not about the system or like -- "Okay i got a bad shake of the system" -- but it's not about the system anymore. It's about me and my growth and my change, what do I want. I ain't going to let that system keep me down. I'm going to grow. I wanna branch out. I wanna heal. I wanna mature. So I just think it proves the resiliency of those who truly want to change

And if that change does occur, do we not owe it to people like Theron to recognize that? Here's Linda Radzik again, acknowledging that wrongdoers do have an obligation to try to atone, but the rest of us have obligations, as well:

Radzik: If you have a moral obligation and I prevent you from fulfilling it, then I've blocked your being able to act the way a moral agent should. I've limited you in a way that damages your moral character, your being a moral being. Our interest in being able to fulfill our obligations are the core of what it is to be a human being. So to limit someone from making amends is to do a serious type of wrong to them.

It will likely not come as a surprise that Theron agrees with this.

Theron: If we're not received by the community that we've harmed and we're genuinely trying to repair that harm and then we're rejected by the community that we're trying to get back into, it sets us back. We're told that we should take responsibility, we've taken that. We're told that we should find ways to pursue something for ourselves in order to maintain some type of success, and then we're rejected by the society that tells us this. I think that would be a strong contradiction to the healing process.

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This, then, might be what it fully means to make amends. The wrongdoer recognizes the harm they've caused, and seeks to make matters right – by trying to be the best person they can, by trying to help others. And the rest of us recognize those efforts, and work to welcome them back to our moral community. Because if they are trying to restore the moral fabric that they tore, don't we have an obligation to recognize that?

Herbert: So one last thing to think about. So ideally, if there's an offender-victim dialogue and everything goes well, in many people's view, the best possible outcome is that the victim offers some degree of forgiveness toward the offender. So I'm curious about, from your all's perspective, you know how important that is to you--the thought that you might be forgiven if, and also if the possibility of being forgiven by somebody on the outside is not a possibility, how important has it been to your growth to try to forgive yourself and to the extent that you've worked on that, sort of what does that look like?

Theron: It's been important. It's been everything for me to try to forgive myself. I mean that's -- if I can't forgive myself, then I can't really move on. Then I'll be stuck. But I had to recognize that I did the wrong to forgive myself, because what am I forgiving myself if I can't acknowledge that I did anything wrong? I want to be forgiven from everyone else, but I don't think it's necessarily the priority. Because some people might not forgive, you know. And if they don't forgive, should I limit with myself to that acceptance of forgiveness? No, I forgive myself. I push forward. I try to put positive things out in the atmosphere and to the world, and that's what I can do. That's my effort. That's my struggle, you know. If they forgive me, then it can contribute to that motivation, it can contribute to that humanity, but I've forgiven myself and that's what's important. Then I can help people.