

NAME: HARUNA-RASHEED MOHAMMED

**RESTITUTION AND THE GHANAIAN CRIMINAL JUSTICE SYSTEM** *Restitution* is defined as the return of property to the owner or person entitled to possession<sup>1</sup> or “a remedy in which a victim is restored to his or her original state or condition prior to the injury; the act of making good for some wrong; restoration of the status quo<sup>2</sup>”. Restitution, a direct consequence of the Non Aggression Principle (NAP), is touted as the best alternative to our larger justice system, including our criminal justice system and not just limited to our civil justice system. Critics of the Non Aggression Principle have questioned the place of restitution in our criminal justice system, arguing that victims suffer various injuries including but not limited to psychological and physical injuries. Our civil justice system has had some form of restitution in it, but our criminal justice system has been one that has generally been turned into *The State v. The Alleged Offender*, thus, offering restitution has no role to play at all, since in most cases, the victim isn’t considered even in the proceedings and where they are considered, they are treated as prosecution witnesses.

In Ghana, the data isn’t readily available, but, as a law student with interests in our judicial system, I have personally witnessed – in the summer of 2019 – two first time offenders in their mid-thirties being sentenced to seven (7) years each in prison in hard labour for the offence of conniving to steal around \$15,000 belonging to the boss of one of them from his personal bank account. **This was even after one of them had paid back his money upon their arrest with**

**the excuse that he didn’t know he was engaging in theft at the time of the transaction.**

This person, had also, prior to judgement being given, after a period of three (3) years of going to court, made efforts to even help the main suspect to repay his share of the money that he claimed to have squandered. Again, in 2020, at the height of the covid19 contact tracing, a twenty three (23) year old footballer fraudulently charged an expatriate an amount of \$750 to conduct a quick covid19 test for him and staff of his company. This led to him being given five (5) years of jail time.

Interestingly, in one of my discussions with a professor of law, he threw more light on this when he said, as a practicing lawyer, he once believed incarceration was a way of rehabilitating criminals and protecting society but after living close to one of the most notorious neighbourhoods in the capital, he came to understand that incarceration was rather

a welcome

<sup>1</sup> *Oxford Dictionary of Law (5th edn, 2003) p. 431*

<sup>2</sup> *The Essential Law Dictionary (1st edn, 2008) p. 431.*

change of scenery for criminals from that neighbourhood since most of them get to have ‘free’ food in prisons and also better accommodation in our congested cells. I have interviewed inmates and ex-inmates who have made me understand that there is a thriving business in our prisons where people sell hard drugs and even smuggle in mobile phones to run telecommunication services which leads to some inmates making fraudulent calls to defraud people on the outside.

What these show is that, prison has not served the purpose for which it was intended. It has failed to reform people at best and at worst, it has rather served as a training ground for people to earn advanced skills in the art of committing crimes.

In light of the above, this article proposes a major reform to our criminal justice system in Ghana, to be modelled along the ideas of libertarianism. It is my argument that: 1. we embark on a deliberate effort of preaching the ‘good neighbour principle’ to the citizenry;

2. institute a system of restitution as opposed to incarceration, especially for first time offenders;

3. prison time for repeat offenders in addition to restitution for their victims;

4. privatise the prison system if need be; and

5. initiate efforts to revise the criminal to make room for the above changes. Since criminal law in Ghana is statute based, restitution wouldn’t be recognised unless and until the Criminal Act, 1960 (Act 29) is revised to capture restitution as a way of reforming criminal behaviour. In order to make the citizenry come to terms with these changes to the statute, a conscious effort must also be made to make people see the need to restrain from threatening first-strike force, committing fraud, stealing and/ or trespassing on people’s properties and rights. If this is done, people will understand the need for restitution should they mistakenly violate the good neighbour principle. This way, we get to know the difference between first time offenders who usually commit crimes due to necessity, as opposed to repeat offenders who have become hardened criminals and know no other way of surviving without committing crimes. In the case of the repeat offenders, they should be made to face their victims and restore them if possible before they are sentenced to serve a prison term. This

way, the emphasis on restitution isn't lost, even if incarceration is incorporated in the punishment regime. This leads to the argument for the privatisation of our prison system. If this is done, the congestion in our prisons shall be decreased dramatically, though I believe that in the ideal situation, there wouldn't even be a need for more prisons if we all practice the NAP.

Finally, all these shall not be of any need if government creates the necessary environment for the private sector to create jobs and for citizens to have legal sources of income, as Ghanaians generally are a peace-loving people who wouldn't threaten the peace and health of others.

Thus, the Ghanaian problem is a government one that trickles down to influence the behaviour of the citizenry.