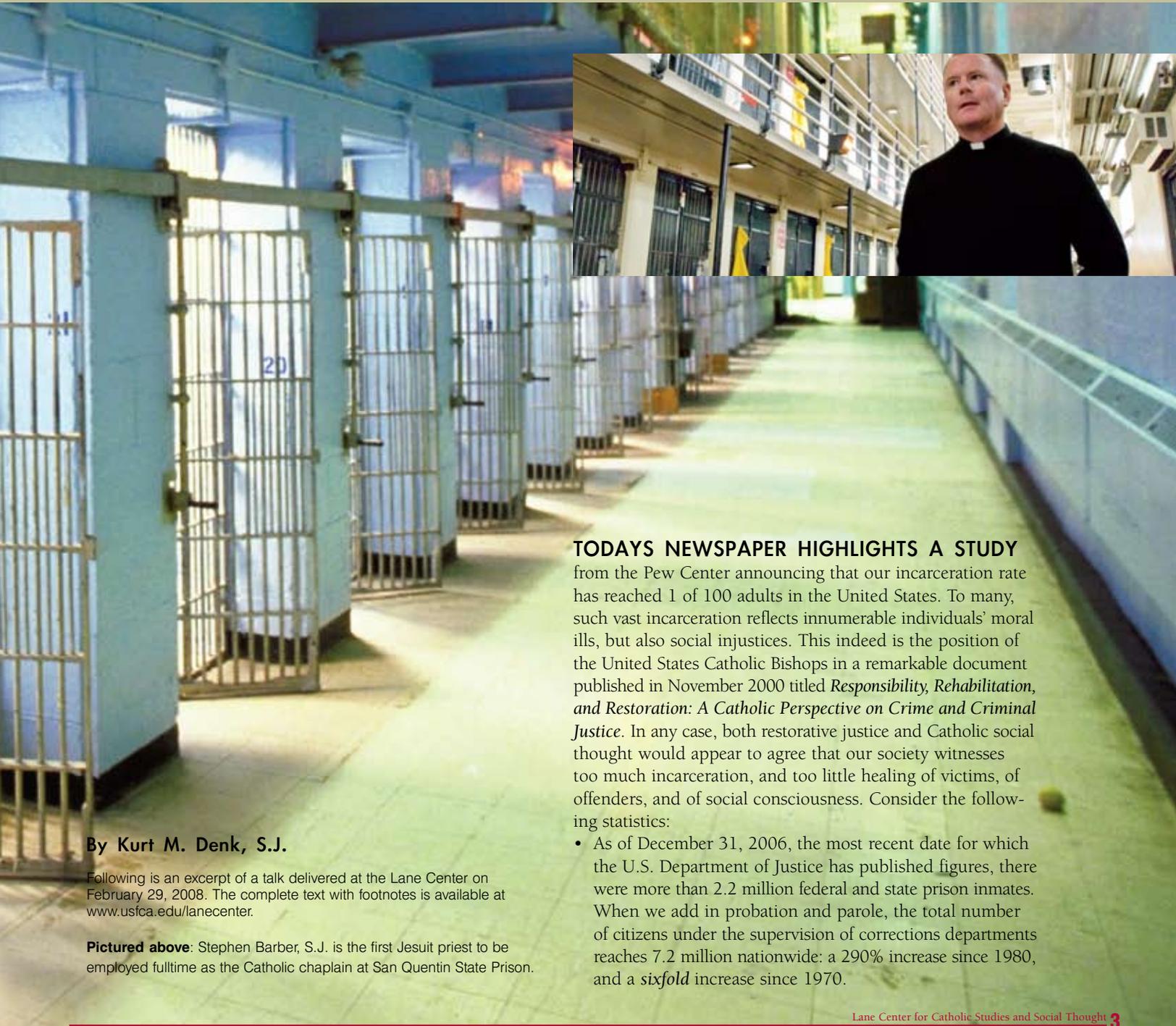


Restorative Justice

and Catholic Social Thought: CHALLENGES AS OPPORTUNITIES FOR Society, Church, and Academy



By Kurt M. Denk, S.J.

Following is an excerpt of a talk delivered at the Lane Center on February 29, 2008. The complete text with footnotes is available at www.usfca.edu/lanecenter.

Pictured above: Stephen Barber, S.J. is the first Jesuit priest to be employed fulltime as the Catholic chaplain at San Quentin State Prison.

TODAYS NEWSPAPER HIGHLIGHTS A STUDY

from the Pew Center announcing that our incarceration rate has reached 1 of 100 adults in the United States. To many, such vast incarceration reflects innumerable individuals' moral ills, but also social injustices. This indeed is the position of the United States Catholic Bishops in a remarkable document published in November 2000 titled *Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice*. In any case, both restorative justice and Catholic social thought would appear to agree that our society witnesses too much incarceration, and too little healing of victims, of offenders, and of social consciousness. Consider the following statistics:

- As of December 31, 2006, the most recent date for which the U.S. Department of Justice has published figures, there were more than 2.2 million federal and state prison inmates. When we add in probation and parole, the total number of citizens under the supervision of corrections departments reaches 7.2 million nationwide: a 290% increase since 1980, and a *sixfold* increase since 1970.

An inmate at a San Salvador prison. Photograph by Jerry Berndt.



- Our nation's incarceration rate – in 2006, 751 inmates per 100,000 population – is the highest reported rate in the world. The U.S. has 5% of the world's population, and 22% of the world's prisoners.
- From a family and social justice perspective, consider the following: compared to the national 2.9% increase in incarceration from 2005 to 2006, the number of women under corrections authorities' jurisdiction rose 4.5% in that period. More and more, incarceration is a family affair, and consider the staggering impact on families when, now, *both* mothers and fathers are missing from their families and communities.
- Particularly alarming are the racial disparities attendant to incarceration in the U.S.:
 - At the end of 2006, 3,042 per 100,000 black males were sentenced prisoners, compared to 1,261 per 100,000 Hispanic males and 487 per 100,000 white males. That means a black male has a 32% chance of serving time in prison during his life, a Hispanic male a 17% chance, a white male a 6% chance.
 - One analyst calculated that the ratio of incarcerated men per 100,000 black males in the U.S. in 2004 was more than five times the ratio of incarcerated men per 100,000 black males in apartheid South Africa some 11 years earlier.
 - Racism is particularly prevalent with respect to the death penalty: of those executed since 1976, 35% have been black, whereas African-Americans are about 12% of the U.S. population. Notably, as well, about 80% of murder victims in cases resulting in execution were white, while only 50% of murder victims overall are white.

Now, an obvious question or retort in response to this raft of statistics would ask whether our high rate of incarceration is an unfortunate but necessary response to the plague of crime. Statistics suggest, rather strongly, this is not the case. Consider:

- While the U.S. leads the world in its incarceration rate, our rate of crime victimization equals the rate of crime victimization among 17 of our peer industrialized nations. Research demonstrates little or even no correlation between

crime and incarceration rates. For example, North and South Dakota, with virtually identical demographic characteristics, have had consistently similar crime rates for decades, and yet South Dakota incarcerates at a rate more than twice that of North Dakota.

- Public perception of crime, and actual crime, simply do not match. While there is a widespread reported sense that crime remains as much if not more pernicious than in the past, violent crime was relatively stable from 1970-1994, after which it declined significantly.
- Furthermore, 82% of those sentenced in 2004 to state prison were convicted of non-violent offenses; and beginning in the early 1980s and continuing over the course of 20 years, those in prison for drug offenses rose from 1 in 10 to 1 in 4, so that over half of today's federal inmates are incarcerated for drug offenses. This is not to say that drugs are not a problem, but it begs the question whether incarceration is the answer.

The point of all of this? As one advocacy group concludes, in light of such statistics, "we can not incarcerate away the crime problem." There must be some alternative.

And here we begin to examine the restorative justice alternative. The renowned Mennonite restorative justice theorist and practitioner Howard Zehr offers a good working definition: "restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible." Zehr's definition already hints at an important aspect of restorative justice: theory and application are interwoven. Restorative justice is, in this sense, fundamentally a praxis – a dialectic of thought and action – as are key tenets of Catholic social thought such as subsidiarity, solidarity, and preferential option for the poor.

Thus, from the outset it is important to note that restorative justice is a *process approach* to dealing with crime and violence. Restorative justice ultimately is meant to be lived out, to be *incarnated*, as we would say in a Christian context, in the real-world praxis of criminal justice, and peacemaking in general. My aim here is thus to compare the restorative

"The spiritual challenges are that places of worship need to get involved and play a more active role in **EDUCATING PEOPLE ABOUT FORGIVENESS, and REDEMPTION**, and the benefits of healing society.... I believe that college students can play the biggest role.... "

Ali, inmate at San Quentin Prison

justice model with the traditional criminal justice model – that system that is responsible for the move to mass incarceration I outlined above. Restorative justice is not limited to any one particular definition or practice. It is rather a set of principles intended to make amends, insofar as possible, after some violent event or other crime. So, I will outline four guiding principles of restorative justice as I have synthesized them from the broad literature.

1. Relationships Precede Rules. The traditional criminal justice system formalizes criminal offense in terms of an offender's violation of the positive law laid down by the state, which in turn requires state action to deter future offense (by that offender and by others), and to punish the offender, remove him from society (for a time), and (at least ideally) rehabilitate his offending behavior. On the other hand, restorative justice comprehends crime as more than rule-breaking, and much more as a violation or rupture of relationships that requires repair: relationships of offenders and victims and their families and communities and, as well, the community as a whole. First and foremost, crime ruptures relationships, and justice entails repairing them insofar as possible.

2. Justice By Participation Rather Than By Proxy. The traditional criminal justice regime adjudicates by proxy. An example: David assaults Peter, and upon arrest and indictment is represented by public defender Donna at a trial featuring prosecutor Paula and presided over by Judge Jane. Aside, perhaps, from being called as witnesses to what involved them in the first place, the original parties are rather passive and the prosecutor takes over in the name of the offended state. Now, there are good reasons for this process. Still, a basic, common sense critical review is possible. Think of it this way: you, Pat, are a parent and your child, Charlie, hits your neighbor Nancy's son, Sam, and takes Sam's toy. Basic human justice in this situation – probably across many if not most cultures – would involve the parents, Pat and Nancy, sitting down with the kids, Charlie and Sam, talking through the dispute, getting an apology from Charlie and an acceptance from Sam, and securing some kind of restitution from Charlie to Sam. In this hypothetical, a real injury has occurred – not

simply to property and person, but to the relationship between the kids and, if it escalates, between their families. But the response, and the process used to address the dispute, is a process of participation, not by proxies, but by the parties involved. From the first premise – that wrongs involve relationships as much as if not more than rules – restorative justice concludes that responding to wrongs must involve a process of participation, not proxy.

3. Restoration Of Wounded Communities, Not Just Adjudication Of Offending Individuals. Building on the first premise of relationality and the second premise of participation, the third principle emphasizes the broader community's role in all of this. Again, beneath the offense of any given crime are the wounds that are inflicted, the relationships that are ruptured. Beyond the necessary adjudication of an individual offender, restorative justice aims at addressing the deeper wounds and, insofar as possible, restoring the balance to the relationships that have been ruptured. Various models of restorative justice encompass this perspective: whether through victim-offender mediation, family group conferencing, healing circles, or other modalities, restorative justice in practice emphasizes encounter, reparative process, and transformation of offenders, survivors, and their respective communities.

4. The Restorative Justice Continuum: From Order, To Rehabilitation, To Shalom. At a basic level, the state's responsibility with respect to criminal justice is to maintain order. Two of the 'big four' classical purposes of the criminal justice system – namely, deterrence of crime and isolation of offending individuals from the community – instantiate this formal responsibility. The third, punishment, acknowledges that, in the realm of criminal justice, the state has a responsibility to treat offenders in a manner that reflects the community's sense that the offenders' behavior violates the community's established sense of morality. The fourth, rehabilitation, speaks to a longstanding tradition, dating in this country to the 18th century when the 'penitentiary' came about, that with the exception of the most grievous offenses, neither punishment nor isolation of the offender from society are ends in themselves. Rather, punishment and isolation are part and parcel of

Stephen Barber, SJ, confers with several members of the pastoral council of Our Lady of the Rosary Chapel at San Quentin: (l-r) Hector Oropeza, Fr. Barber, Albert Hernandez, Ed Renteria and Bob Kaser. Photo by Mel Lindstrom, Courtesy of the California Province of the Society of Jesus.



an incarceration that entails a broader program aimed at ‘treating’ an offender so that he may be rehabilitated. Historically, we have seen in this country, and especially in this state, a give and take with respect to the extent to which rehabilitation should or even can be part of the criminal justice system’s responsibility. In California, for example, in the late 1970s the Legislature passed measures explicitly declaring that the Corrections Department’s mission was to isolate and punish, *not* to rehabilitate. In 2005, Governor Schwarzenegger did rename the Corrections Department to add the word “Rehabilitation.” However, to what extent this renewed emphasis will take root remains to be seen. In any case, traditional criminal justice aims, minimally at order, maximally at rehabilitation. Where restorative justice differs is in its conviction that communities ideally desire not simply order, not just the rehabilitation or treatment of its ill members, but a deeper and more constitutive *peace* – that is, a fundamental at-rightness and well-being of relationships that actually feeds relational growth. Biblically, this is the concept of *shalom*. Obviously while not all restorative justice theorists advance a biblical view, there is a common current in restorative justice theorizing that articulates the premise that restorative justice aims at more than ‘fixing’ the effects of an offense but, indeed, represents a transformative social vision.

Does any of this work in the real world? The answer is yes. Consider the following:

Internationally: Perhaps one of the most significant international examples of restorative justice at work would be the truth and reconciliation commissions of South Africa and other nations. But even for ordinary justice, many countries have begun to adopt restorative practices – with New Zealand perhaps the most-cited. In the 1980s New Zealand – a country with very similar crime demographics as the U.S. – embarked on a reform of its criminal justice system. Eventually it switched from a top-down to a grassroots model for that reform, incorporated ancient justice practices of its indigenous Maori population, and then amended its constitution to mandate Maori-inspired restorative justice practices as the norm for its juvenile justice system. Ninety percent of cases following this model yield a consensus decision, which in most all cases is then formally ratified by a judge. Not only have New Zealand’s

recidivism rates for juvenile offenders plummeted, but the offense rate as a whole has dropped significantly.

Domestically: restorative justice-oriented programs have been successfully implemented for both nonviolent and violent juvenile and adult proceedings in a number of jurisdictions in Alaska, Minnesota, and elsewhere. And right here in our own back yard, for the past 11 years the San Francisco Sheriff’s Department has successfully implemented RSVP – *Resolve to Stop the Violence Program*. In its first year alone – and the success has continued, even amidst funding cuts – RSVP 8-week program participants had a recidivism rate 46% lower than non-participants; 12-week program participants had a recidivism rate 53% lower than non-participants; and 16-week program participants had a recidivism rate just shy of 83% lower than non-participants. It costs California \$35,000 to jail an inmate for one year; RSVP costs just \$7 a day.

Connections Between Restorative Justice and Catholic Social Thought

We now turn to the connections between principles of restorative justice and of Catholic social thought, beginning with a simple “Top 10” tenets of Catholic social thought.

1. human dignity and respect for human life
2. the link between the religious and social dimensions of life
3. the link between love – *caritas* – and justice
4. social and economic justice, with justice as “fidelity to the demands of a relationship”
5. the value of and right to equality and to political participation
6. the balancing of rights and responsibilities
7. solidarity and the preferential option for the poor and vulnerable
8. stewardship and promotion of the common good
9. the value of association and subsidiarity
10. promotion of peace and liberation from structural sin

Let me begin the restorative justice-Catholic social thought comparison with a three-word quote from Howard Zehr, the restorative justice theorist and practitioner whose restorative justice definition I quoted earlier: “Violations create obligations.”

Restorative justice comprehends crime as more than rule-breaking, and much more as a violation or **RUPTURE OF RELATIONSHIPS** that requires **REPAIR**: relationships of offenders and victims and their families and communities and, as well, **THE COMMUNITY AS A WHOLE**.

One of the fundamental ethical premises of Catholic social thought is that rights and responsibilities co-exist in a dialectical relationship. The restorative justice principle, then, that violations of others' rights implicates an obligation or responsibility to restore what has become unbalanced, fits in well with one of the first principles of the Catholic ethical tradition.

As a way of schematizing the nexus between restorative justice and Catholic social thought, I propose four groupings of Catholic social thought's traditional tenets that parallel the four broad restorative justice themes I outlined above.

Restorative Justice Themes	Nexus	Catholic Social Thought Themes
[1] Relationships precede rules	First Nexus: Foundations	[1] Anthropology of incarnation and covenant: (1) human dignity and respect for human life (2) the link of the religious and social dimensions of life
[2] Justice by participation rather than by proxy	Second Nexus: Justice Orientation	[2] Justice as fidelity to the demands of a relationship: (3) the link between love – caritas – and justice (6) the balancing of rights and responsibilities (9) the value of association and subsidiarity
[3] Restoration of wounded communities, not just adjudication of offending individuals	Third Nexus: Restorative Orientation	[3] Covenantal social ethics linking the religious and social: (2) the link of the religious and social dimensions of life (4) social and economic justice, with justice as "fidelity to the demands of a relationship" (5) the value of and right to equality and to political participation (6) the balancing of rights and responsibilities (7) solidarity and the preferential option for the poor and vulnerable (8) stewardship and promotion of the common good (9) the value of association and subsidiarity
[4] The restorative justice continuum: from order, to rehabilitation, to shalom	Fourth Nexus: Restorative Vision	[4] The integrative Gospel vision: peace and liberation: (7) solidarity and the preferential option for the poor and vulnerable (10) promotion of peace and liberation from structural sin

[1] First nexus - Foundations: The restorative justice movement is founded on a human relationality premised on respect for others' lives, rights, and cultural meanings. Catholic social thought rests on a foundational anthropology premised on human dignity and respect for human life, and on the link of the religious and social dimensions of life.

[2] Second nexus - Justice Orientation: Where the criminal justice system in our context turns the process of justice over to professionals – more or less exclusively – restorative justice aims at including those communities of interest that are affected by the rupture of a relationship. Catholic social thought's link of love and justice corresponds with restorative justice's vision of restoration, not mere 'correction' or punishment upon offense.

[3] Third nexus - Restorative Orientation: Violence and criminality are as much – arguably, if not more – a manifestation of broader social ills, as they are the outcome of particular individuals' choices. As Catholic social teaching emphasizes, we need to challenge the broader culture of

violence in which we live, and opt for a culture of life. If justice is fidelity to the demands of relationship, and our relationships themselves inhere in a broader social context, then a restorative orientation to a Catholic perspective on crime and violence likewise and necessarily takes in a broader, covenantal social ethic. A covenantal social ethic emphasizes human equality and political participation, association and subsidiarity, stewardship and promotion of the common good, as well as solidarity and the preferential option for the poor and vulnerable – all themes that lie at the root of Catholic social thought.

[4] Fourth nexus - Restorative Vision: In the Catholic social thought context the fourth nexus, concerning restorative vision, bespeaks the broadly integrative Gospel vision of peace and liberation. Catholic social thought's themes of solidarity and the preferential option for the poor and vulnerable, and promotion of peace and liberation from structural sin, themselves bespeak a broad restorative vision.

Jesus pardoning of the sinful woman (Luke 7:36-50) illustrates the Christian vision of justice as restorative: the woman's restoration to God, to her community, and to her very self through a justice of Jesus that is relational and sees the woman's root dignity and faith.

Illustration by Julius Schnoor von Carolsfeld, scanned by Publications for Latin America (WELS), World Missions Collection Clip Art, Vol. 1, Pt. C, available at <http://www.wels.net/wmc/Downloads/189.gif>.



And that is unsurprising, for when we stand back and take in the broad sweep of the Gospel's integrative vision of peace and liberation, we find therein Jesus and many men and women like ourselves, who require forgiveness and mercy and restoration, and find it in Him who is the Prince of Peace. We find in the Gospel's own transformative – that is, redemptive – vision, the Jesus whose utmost act, of going to the cross, testifies to Jesus' own solidarity with those offended by violence, as well as his solidarity with those who offend, as our Lord himself, at the point of his own death, forgave those who offended him (Luke 23:34; 43). ■

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The complete text, including a theological reflection on Luke 7:36-50 (Jesus' pardon of the sinful woman), the final section on "Challenges as Opportunities for Society, Church and Academy" and all footnotes can be found on the Lane Center Web site: <http://www.usfca.edu/lanecenter>.



Kurt M. Denk, S.J.

FOR CITY & WORLD

Get On The Bus: Uniting Children with Their Mothers and Fathers in Prison

Get on the Bus brings children and their caregivers from throughout California to visit their mothers and fathers in prison. An annual event, *Get on the Bus* offers free transportation for the children and their caregivers to the prison, provides travel bags for the children, comfort care bags for the caregivers, a photo of each child with his or her parent, and meals for the day. On the bus trip home, following a four-hour visit, each child receives a teddy bear with a letter from their parent and post-event counseling.

Children with a parent in prison are usually cared for by relatives, often grandparents. Many caregivers are unable to make the drive, due to distance or expense. *Get on the Bus* offers a priceless opportunity – a mother's touch, a father's hug, a family photo, a private conversation and a connection with hope and healing.

The annual *Get On The Bus* events happen each year around Mothers' Day and Fathers' Day. In 2007, *Get On The Bus* brought 39 buses with more than 800 children, 400 caregivers and 200 volunteers to seven prisons in California. In 2008, *Get On The Bus* will be expanding to 47 buses, reuniting even more children with their parents.

Volunteers are needed to accompany children on the buses and assemble travel bags. Donations are needed to help cover the costs of buses, teddy bears, and snacks.

To volunteer in the San Francisco Bay Area contact Cathy Kalin at: ckalin@ploughshares.org or 415-387-3218. For volunteer opportunities in other parts of California, contact director@getonthebus.us or 818-980-7714. For more information: <http://www.getonthebus.us/>.

