

Restorative Justice in Catholic Social Teaching: Implications for Deliberative Democracy

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Aims and Objectives: An inquiry into the implications of restorative justice for deliberative democracy from the perspective of modern Roman Catholic social teaching.

In recent years, restorative justice has emerged as a “moral squint” in Roman Catholic Social Teaching.¹ In their pastoral letter, “Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice,” the U.S. bishops write:

An increasingly widespread and positive development in many communities is often referred to as restorative justice. Restorative justice focuses first on the victim and the community harmed by the crime, rather than on the dominant state-against-the-perpetrator model... Restorative justice also reflects our values and tradition. Our faith calls us to hold people accountable, to forgive, and to heal.²

For proponents of restorative justice, sentencing circles, family group conferences, or victim-offender reconciliation programs represent an effective alternative to the prevailing regime of retributive justice.³ Yet the distinction, while illuminating, fails to do full justice to role and implications of restorative practices in modern, pluralist democracies. Neither retributive nor restorative justice, after all, are rigidly limited conceptions.⁴ As nonwestern uses attest, moreover, restorative justice cannot be confined to juridical practices of a criminal justice system.

In the South African Truth and Reconciliation Commission (TRC), as Archbishop Desmond Tutu observes, “the central concern is not retribution or punishment but, in the spirit of *ubuntu*, the healing of breaches, the redressing of imbalances, the restoration of broken relationships” within the very fabric of society. The “crimes against humanity” committed under

¹ Robert Bolt, *A Man for All Seasons* (New York: Random House, 1990), 19.

² United States Conference of Catholic Bishops, “Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice,” (Washington, D.C.: USCCB, 15 Nov. 2000), 11. Cf. Howard Zehr, *The Little Book of Restorative Justice* (Good Books, 2007), 37.

³ Cf. Gerry Johnstone and Daniel W. Van Ness, eds. *Handbook of Restorative Justice* (Willan Publishing, 2007); Andrew von Hirsch, et al., eds. *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (Hart Publishing, 2003); Gerry Johnstone, ed. *A Restorative Justice Reader* (Willan Publishing, 2003); Daniel W. Van Ness and Karen Heetderks Strong, *Restoring Justice* 2d. ed. (Cincinnati, Ohio: Anderson Publishing, 2002); Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Herald Press, 1990).

⁴ Some interpretations of retributive justice look beyond deterrence, incapacitation, or punishment; while the exercise of restorative justice need not exclude retributive sanctions. Forgiveness and punishment, it seems, are not exclusive options. For differing rationales, processes, and programs see Gerry Johnstone, *Restorative Justice: Ideas, Values, Debates* (Portland, Oregon: Willan Publishing, 2002), 10-35, 161-71.

apartheid precluded a strict, juridical adjudication of individual guilt and punishment. Neither was a restoration of the apartheid criminal justice system envisioned. Indeed, in the course of the hearings, many of those initially regarded as perpetrators were revealed as victims of the apartheid regime. In South Africa, restorative justice was conceived as a *path* to the construction of a democratic order, not merely a meliorative practice within it. Perhaps the crucial question, then, is just what is being restored.

Modern Roman Catholic Social Teaching, I believe, offers a rich, yet insufficiently analyzed framework for interpreting restorative justice and the family of practices it inspires in deliberative democratic polities. Contemporary political philosophy typically offers a Hobson's choice between liberal "politics of rights" and communitarian "politics of the common good."⁵ Modern Catholic social teaching, by contrast, introduces a solidaristic motif in its use of rights by interpreting the common good in terms of basic human rights: the *ethos* of rights discourse, that is, is underwritten by the structural imperatives of the common good. Such a "thickening" of rights discourse under the rubrics of the common good, I believe, grounds restorative justice in modern Catholic social teaching—a conception that reflects its distinctively religious genealogy. Conceived thus, restorative justice constitutes a fundamental ethical motif running through the design and critique of society's basic structure: a constitutive dimension of modern deliberative democracy.

In collaboration with DCCIRP, I would hope to explore this thesis by (i) analyzing representative restorative justice programs and their rationale in the US, particularly those supported by the Roman Catholic Church, (ii) interpreting these practices from the perspective of restorative justice developed in broader approaches to social reconciliation, e.g., the TRC; (iii) assessing the distinctively religious (Christian) implications of restorative justice in pluralist democracies, with particular attention to the contributions of modern Catholic social teaching.

Methodology:

I will draw upon social-scientific analyses of restorative practices, attending to what Amartya Sen describes as the evaluative interpretations that underlie them⁶: What are the prevailing ethical rationales implied by emerging restorative practices? How do they "fit" within the broader politics of modern, liberal democracies? (In the restorative justice section of the Catholic Theological Society of America convention in 2009, I offered an initial sketch of differing liberal, communitarian, and Roman Catholic approaches to restorative justice as it pertained to the incarceration and deportation of undocumented migrants.) Finally, I would offer a critical, rights-based ethical assessment grounded in modern Catholic social teaching.

Background:

I have been exploring aspects of the questions posed by restorative justice since 1995 when I began research in Rwanda, following the 1994 genocide; and in South Africa, where I

⁵ See Michael Sandel, "Introduction," in Liberalism and Its Critics, ed. Michael Sandel (New York: New York University Press, 1984), 4, 6, 10.

⁶ See Amartya Sen, Development as Freedom (N.Y.: Anchor Books, 1999), 8-10, 76-81; idem, On Ethics and Economics (Oxford: Basil Blackwell, 1990), 12-15.

attended hearings of the Truth Commission. I have subsequently spoken and published several articles on the legal-judicial, ethical, and religious implications of social reconciliation; and regularly teach a course devoted to reconciliation and restorative justice. With Prof. Stephen Pope of Boston College, I initiated the restorative justice section of the CTSA. Pastorally, I have served for the past nine years as Roman Catholic chaplain to the Federal Women's Prison in Dublin, California, where the majority of the inmates are poor, Hispanic/Latina migrants. I have collaborated with the California Bishops Conference in planning a regional conference on restorative justice in 2009, and am currently co-chair of the program committee for a national conference on restorative justice to be held this summer at Santa Clara University. I likewise serve on restorative justice commission of the California Jesuit Province. In several talks and academic papers, I have, moreover, sought to address the critical question of the role of religious belief in modern, pluralist polities. A forthcoming contribution to *Theological Studies* develops maxims for applying Church teaching to contested issues in bioethics.

Academic Contributions:

Although the U.S. Conference of Catholic Bishops has adopted a restorative rationale, the legal, ethical, and theological implications of restorative justice for a pluralist democracy have yet to be systematically explored from the perspective of modern Catholic social teaching. As I noted above, restorative justice is often seen as an alternative to more strictly retributive practices in the criminal justice system. Victim/offender mediation, sentencing circles, etc. typically presume a clear delineation of victim and offender. Yet some proponents of restorative justice have recognized the limits of such assumptions, preferring to speak of “transformative” (or “generative”) justice when the “perpetrator” has herself been victimized by human rights violations. Undocumented migrants, for instance, may have violated US civil law; but as Catholic teaching acknowledges, many have been forcibly displaced by systemic deprivation of their basic human rights to education, nutritional well-being, health care, etc.

Here, the breaches are not merely individual, but social and systemic. Indeed, as in South Africa, the nature of such “broken relationships” raises into question the “rule of law” in deliberative democracy. What, then, is being restored? Where some proponents of restorative justice trace the genealogy of restorative justice to traditional communitarian practices, e.g., sentencing circles,⁷ critics object that the rhetorical “we” of such practices is often tightly circumscribed.⁸ Strangers or nonmembers of the body politic lack the “right to have rights.” The common good is “common” only up to a point. For liberal theorists, conversely, crime, as a voluntaristic legal construction, offends against the “general will” (in its various liberal denominations). Retributive practices restore, not the thicker bonds of communitarian

⁷ See H. Zehr, Changing Lenses: A New Focus for Crime and Justice (Scottsdale, PA: Herald Press); D. Van Ness, “New Wind and Old Wineskins: Four Challenges of Restorative Justice,” Criminal Law Forum 4:2: 251-76; J. Braithwaite, Crime, Shame and Reintegration (Cambridge: Cambridge Univ. Press, 1989; idem, “Shame and Modernity,” British Journal of Criminology 33:1, 1-18.

⁸ See Johnstone, Restorative Justice: Ideas, Values, Debates, 36-61; Kathleen Daly, “Restorative Justice: The Real Story” (paper presented at the Scottish Criminology Conference, Edinburgh, 21-22, Sept. 2000).

membership, but the formal rule of abstract right/law (in which distinctive religious appeal is strictly limited).

Now the thesis I wish to explore may be summarized thus: In offering a rights-based conception of the common good, modern Catholic social teaching charts a “via media” between liberal and communitarian perspectives of retributive and restorative justice. Invoking dignity and human rights, both negative and positive, mediates between the “thin” liberal-philosophical emphasis upon individual negative claim-rights of civil liberty and “thick” communitarian appeals to the common good of particular narrative traditions. In concert with “positive” duties of provision and protection, the structural imperatives of the common good give rise to a substantive conception of justice (distributive and restorative). For what must be restored in “the healing of breaches” is less the prevailing ethical order as in communitarianism, or the formal, rule of (positive) law as in philosophic liberalism, than a moral order in which the basic human rights of *the most vulnerable* are preserved and protected—our secular, or better political gloss of the biblical ideal of covenant community.

Such a conception of restorative justice, I hope to argue, likewise illumines the place (rhetorical *locus*) of religious belief in deliberative democracy. For incorporating communitarian appeals to a “thicker” conception of the common good militates against a merely vacuous tolerance. Deliberative tolerance, I believe, is rather borne on mutual understanding, if not full agreement, of differing religious traditions. Indeed, as in quasi-judicial proceedings of the TRC, distinctive religious attitudes and beliefs may ground citizens’ political motivation and provide an interpretative repertory (narratives, parables, tropes, etc.) for the realization of a rights regime.

In short, the proposed inquiry would permit us to bring the rich resources of Roman Catholic social teaching to bear on the emerging practices of restorative justice in pluralist democracies. Looking beyond U.S. practices by incorporating elements of social reconciliation reveals the essentially transformative role of restorative justice itself—a role that draws upon a distinctively religious “moral imaginary” even as it underwrites the public reasoning of deliberative democracies.

Academic Contributions:

I would hope to present papers on the thesis at the Society of Christian Ethics (national and regional) conventions, and at the Catholic Theological Society. So too, I would seek to publish related essays in the Journal of the Society of Christian Ethics, Theological Studies, and the Journal of Religious Ethics. The fruits of my research would, I hope, support my continuing work with the restorative justice program of the California Catholic Bishops Conference and the restorative justice initiatives undertaken by the California Province and Assistancy of the Society of Jesus. Finally, I hope to complete a book on human rights and narrative as a basis for restorative justice and social reconciliation.