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The Seductive Vision of Restorative Justice: Right-Relation, Reciprocity, Healing, and Repair

When I first encountered “restorative justice,” I was filled with enthusiasm. Restorative justice took a positive, forward-looking approach to crime. It focused on repair instead of punishment, on healing the wounds of injustice instead of inflicting further retributive suffering.¹ It conceptualized crime as the wrongful violation, not of an impersonal set of rules, or an abstract notion of “the state,” but of individual victims.² It was concerned with the humanity of both victim and offender, and sought to restore the dignity of each by reintegrating both into respectful and healthy communities. It saw the community as the source of resolution of conflict.³ Restorative justice seemed to hold a credible promise of something that had always appeared too illusive to hope for: a reconciliation of meaningful – even strict – accountability for wrongdoing with compassion for both victim and perpetrator.⁴ I was powerfully drawn to restorative justice in many of these particulars. I was persuaded by its rejection of our cultural obsession with punishment as satisfying proxy for justice; its critique of our faith in imprisonment as necessary and sufficient assurance that justice has been done;⁵ its claim that punishment as imprisonment is gratuitously cruel and counterproductive.⁶ Most importantly, however, I was persuaded that our conflation of justice with punishment as imprisonment – or as any pure infliction of suffering on the wrongdoer – belied an impoverished, shallow, unsophisticated, and ultimately empty understanding of justice itself.⁷ Llewellyn and Howse’s claim that “there is no positive value for justice in the *very fact* of the perpetrator’s suffering or sacrifice of well-being” sounded right.⁸ Understanding justice as the creation of relations of reciprocal respect seemed a far fuller and more enlightened understanding than the crude and brutal equation of justice with punishment. I became convinced that our obsession with retribution had created, and was serving to perpetuate, habits of mean-spiritedness that were doing untold damage in every facet of our lives, from international conflicts to our most intimate micro-interactions.

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In place of this nasty and destructive retributive obsession, restorative justice offered an array of spiritually expansive ideals. It conceived wrongdoing in terms of wrong-relation and justice in terms of "right-relation."⁹ Drawing on the spiritually sumptuous ideas of Martin Buber, restorative justice envisioned an escape from our bondage in so many "I-It" relationships. It envisioned justice as the repair of the world; the struggle toward ever more sustaining "I-Thou" relationships. Justice, then, was to be found in an authentic experience of mutuality, reciprocity, and regard between and among individuals. In place of the spiteful aspiration to inflict suffering on the wrongdoer as a means of achieving justice, restorative justice offered a loving aspiration to heal the damage of the wrong and to repair the injury to the relationship between the victim and the perpetrator. Such healing was to be supported and sustained by a community committed to mutual equality and respect. In place of the bleak procedural labyrinths of traditional legal institutions, restorative justice offered immediate and dramatic encounters between victims and offenders.¹⁰ It offered both victims and offenders an experience of justice as a personal achievement.¹¹ Justice would no longer be imposed from on high but would be imaginatively and actively created and enacted by individuals and communities.¹² We would no longer look for justice in the substance of judicial decisions, jury verdicts, or prison sentences. We would expect and demand to find justice in relationships.¹³

I was enticed by all these wholesome carrots held out as alternatives to the sinister stick of retribution. It seemed so right-headed to organize the energy of our sense of justice around these far more positive goals: renewal of the victim's dignity, security, and sense of belonging in community; the perpetrator's contrition, his coming to accept the validity of shared norms prohibiting harmful conduct, his active participation in helping to repair the harm to the victim; and, ultimately, through this process of accountability and repair, the social redemption of both victim and perpetrator and their return – without stigma – to a position of acceptance and participation in the community.¹⁴

The point of justice (along with the point of a career devoted to justice) would no longer be merely the infliction of retaliatory suffering. Nor would it even be the piecing back together of some banal *status quo ante*.¹⁵ Instead, the goal of justice might become something far more worthy of devotion. Restorative justice could also be seen as an approach to crime that was working toward social justice and the broader goals of the creation of relations and communities of mutuality, respect, peace, harmony, and equality.¹⁶ And, though this idealized goal of right-relation might always elude our grasp, and though we might be forever stuck in an agonistic struggle toward this idealized conception of justice, at least, with right-relation as the target of justice, we could be confident we were aiming

at something genuinely desirable and worthwhile. We could be certain that justice – not only in its abstract understanding, but in its day-to-day applications in the resolution of specific wrongdoing – was at least on the trail of something indisputably good, something indisputably connected with the pursuit of peace and with the creation of sustaining communities and relationships. This promised no small gain given that the value of the pursuit of criminal justice in the form of ever-longer prison sentences seemed so utterly doubtful.

The rhetoric of restorative justice speaks very personally to the listener, and I was aware that my attraction to it had some very personal pulls. First, my own weariness of feminist rage exhaustion was significant. The feminist commitment to anger and to a retributive sense of what was needful to bring about greater equality for women in areas such as sexual assault, domestic violence, pornography, and sexual harassment was becoming a heavy emotional and energetic burden. Many of the feminist stars in the academy were skilful rhetoricians of rage.¹⁷ Being a legal feminist seemed to require emulation of those performances and, as a result, negotiating the difficult terrain of the negative emotions of justice: anger, resentment, vengefulness, and bitterness.¹⁸ To be publicly committed to eliminating injustice caused by sexism in the law often meant incurring the risk that others would instantly collapse one's persona into the toxic trope of the angry feminist. At the same time, within the feminist community, a pose of anger, at the very least, was necessary lest one be seen as lax in one's feminist commitments.¹⁹

And, in all good conscience, it was cowardly and complacent to refuse to participate in the anger to which gender injustice gave rise. The retributive sentiments of feminism were often rightly fuelled by compelling evidence that the system was set up so that men could and did "get away with it." Exercise of police and judicial discretion sympathetic to accused men and dismissive of victimized women and children made convictions hard to come by in cases of private violence. The only available antidote to this bias in favour of the accused seemed to be to advocate that more credence be given to women and child victims and harsher penalties be dealt out to male offenders.

Restorative justice seemed to offer a better alternative. It was committed not only to holding offenders accountable, but also to repairing relations and to establishing communities capable of supporting practices of equality and respect. Feminist retributivism, while it perhaps offered justice to women on some level, also seemed to entail ever more gender animosity.²⁰ Restorative justice, by contrast, seemed to promise something better than mere retribution.²¹ It potentially offered better solutions to the intractably complex problems of intimate violence. It aimed at hard-nosed accountability for male offenders as well as at the possibility of

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improved, more respectful, more harmonious gender relations in the future. Perpetrators of sexual assault, child sexual abuse, and domestic violence would be forced to look their victims in the eye and acknowledge the damage they had done rather than simply hiding behind aggressive defence counsel or bitterly doing time without acknowledging responsibility. Perpetrators would suffer genuine shame about their conduct, but restorative institutions would channel the energy of that shame toward better futures for both victim and offender.²² Thus restorative justice, accompanied by genuine community support for victims, was perhaps a better means of ensuring accountability as well as effective deterrence.

My attraction to restorative justice was also motivated by the malaise that afflicts many lawyers, law professors, judges, and other actors in the legal system: weariness of squabble in general. Not propelled by any first-order thirst for revenge, stuck in that sorry niche of the world set up to manage the energy of other people's resentment, and, worse still, knowing that the legal system, even when it does deliver on its own terms, never really delivers a particularly satisfying experience of justice, we can fall prey to a dejected disgust with our own endeavour. We are encumbered by a guilty awareness that the usual rights and remedies afforded – imprisonment, fines, probation, conditional sentences – all too often fail to fulfill the aspirations behind victims' decisions to participate in the criminal process.²³ Even when, on those rare occasions, the court's pronouncement of a guilty verdict inspires the victim to burst out with a victorious "Hooray!" the celebration seems somehow artificial and hollow – relief masquerading as satisfaction. Or perhaps the outcry is itself an attempt to grasp in the last moment some more immediate encounter, some catharsis of genuinely relational gloating, that the process of adjudication has failed to deliver. This lacklustre sense of what the present system has to offer by way of experiential justice inspires a longing for something more. To be able, then, to approach the endeavour of justice with a sense that, at least theoretically, one might be able to offer something as seductive and rich as encounter and experiential justice-in-relation seemed to lend a new-found nobility to the task.

If, as Martin Buber claims, "All actual life is encounter,"²⁴ then institutions of justice, set up to facilitate the possibility of actual encounter, would surely yield a more life-giving conception of justice than institutions that do all they can to prevent encounter. Or as restorative justice advocate John Braithwaite puts it: The restorative movement is attractive because it is "to justice as jazz is to music."²⁵ Restorative justice seemed to have a freer form and deeper soul than do our traditional institutions.

Moreover, restorative justice seemed to offer hope to those who recognized the importance of, and felt a need to participate in, the legal process but who also claimed no desire to deal in the currencies the system has

to offer. For those victims who cared more about apologies than imprisonment – those who weren't interested in seeing the offender punished but who would have been gratified by the offenders' acknowledgment of responsibility, expression of remorse, and making of meaningful reparation – restorative justice offered the possibility of principled participation in institutions of justice.²⁶ Likewise, restorative justice seemed to offer an important alternative for victims uninterested in punishment but deeply concerned as responsible citizens to try to ensure that the offender would not go on to victimize others.

Thus the tremendous appeal of restorative justice seemed to lie primarily in its validation of my own and other peoples' dissatisfaction with a legal system that depersonalizes, desiccates, and fetishizes justice in a way that deprives people of meaningful experiences of justice *in relation*. Restorative justice was appealing because, while it offered to put the *doing* back into doing justice, it did not at the same time validate the impulse toward revenge.²⁷ It held out a refreshing optimism that the desire for revenge – though not the desire for a personal experience of actively participating in bringing about justice – is a product of our reluctance to use our imaginations to envision other ways of creating accountability in the victim-offender relationship.²⁸ Restorative justice respected the desire for a personalized experience of justice as an individual and relational achievement, and it set the imagination to the task of envisioning positive, nonviolent ways of creating that experience.²⁹

Perhaps we were not hardwired for revenge after all. Perhaps, by strengthening connections between compassion, equality, mutuality, reciprocity, and respect, on the one hand, and justice, on the other, we could be true to our need for justice while ending cycles of retributive suffering. Vengeful longings would, therefore, gradually be replaced with desires for the experience of respectful relation.³⁰ Successful practices and supporting discourses of justice-as-repair would become mutually reinforcing in their pedagogical and practical effects.

Along with being drawn into the theory of restorative justice, I was also moved by its success stories. I was inspired by stories of the proceedings of the South African Truth and Reconciliation Commission, by moments in which victims and perpetrators of the most horrific crimes of apartheid faced one another across a table and recounted the unimaginable suffering of their victimization, recounted the details of their crimes, and struggled, however ambivalently, however painfully, to work toward an understanding of how to move forward together into a more humane society.³¹ Likewise, I was amazed by compelling stories of victims of sexual abuse who have been able to encounter their abusers, speak their suffering, and educate their abusers about the harm caused by their conduct. Some victims had clearly received benefits from such encounters. They

had obtained information about the details of the abuse that they had repressed and had been able to set out strict guidelines to be followed by their offenders in assuring that the offenders would not interfere in the victims' lives again.³² Others had benefited simply from the experience of hearing their abuser accept blame. I was moved also by stories of healing restorative encounters between murderers and the surviving loved ones of their victims.³³

One of the most powerful aspects of these stories was the degree to which their focus on "encounter" showed an astute awareness of the mysterious exclusivity in the relation between victim and perpetrator.³⁴ Restorative practices seemed singularly capable of accessing and redirecting the energy of that sinister intimacy – bringing it out in the open and enlisting it in the service of justice and right-relation. It brought the tie between victim and offender out of the closets of shameful and mutual stigma and into the open, where it could be seen, heard, and healed.³⁵

Some Skeptical Anxieties

Eventually, however, I began to experience twinges of doubt. I had a niggling but persistent embarrassment about my willingness to be seduced by the restorative justice movement. And the embarrassment grew as my commitment to an intellectual defence of restorative justice seemed to be pushing me into more and more situations where I was answering too many difficult questions about the viability of restorative justice with rhetorical platitudes about right-relation, mutuality, equality, and respect.

Inasmuch as I was drawn to this project of trying to find a nicer way of doing justice, as much as I tried to effect the necessary conceptual uncoupling of justice and punishment and to effect the necessary new coupling of justice and right-relation, I couldn't quite do it. I remained unable to let go of my moral intuition that a just response to wrongdoing often requires "throwing the book" at wrongdoers, with equal emphasis on the "throwing" and the "book." Justice persisted in being bound up with both violence and consistency. Compensatory *schadenfreude* for victims and nasty comeuppance for wrongdoers still felt just. Moreover, "the book" (by which I mean the ideal of the rule of law) and its commitment to consistency, predictability, precision, and universal application also continued to have compelling and even essential connections to any sane and workable notion of justice.³⁶ Thus the restorative aspiration to divorce justice from reciprocal infliction of suffering, along with its faith in context supersensitivity, which sees the shape of relational justice as ever springing from the particulars of this victim, this wrongdoer, and this community, caused me considerable anxiety. Perhaps justice just wasn't nice. And perhaps it had to be tied to a notion of fairness which

held that a just response to wrongdoing required some kind of parity in the consequences of wrongdoing among perpetrators of the same kind of wrong.³⁷

Thus I became concerned that, in my enthusiasm for restorative justice, I was indulging in what Jonathan Allen so aptly calls the “wishful thinking (or at least, not very thoughtful wishing)” of restorative justice.³⁸ I began to feel that there was a shamefully Panglossian aspect to the whole restorative justice movement for which someone, though most likely not the advocates of restorative justice, would have to pay.³⁹

I also identified an element of hypocrisy. I discovered that I felt this discomfort most intensely when I stopped thinking about the beauty of the ideas; stopped luxuriating in the voyeuristic moral gratification of looking on at the allegedly healing encounters of others; and started to think about whether in my own life and my own conflicts I was really willing to sign up for restorative encounters and restorative solutions. There was something troubling about my own hesitancy and about my lack of confidence in my own willingness and ability to apply the theory to myself. Restorative justice seemed just fine for other people, for harms I had not suffered, but when it came to *me*, restorative justice wasn't what I wanted. I did not feel competent as an advocate for restorative justice because I doubted both my ability to repair relationships marred by wrongdoing and my commitment to doing so.

Of course, I was not alone in thinking that if I wanted to promote restorative justice I would have to be able to claim a few impressive restorative successes of my own. Most advocates of restorative justice are aware of their obligation to “walk the talk.” The territory of envisioning grand-scale social, communal, and relational transformations for the better generally comes with a recognition that (like analysts who must submit to analysis) advocates of restorative justice need to have a track record of successful healing and transforming in their own lives and relationships. Van Ness and Strong in their book *Restoring Justice* write:

A hallmark of restorative justice must be ongoing transformation: transformation of perspective, transformation of structures, transformation of people. It begins with transformation of ourselves, for we too have recompense to pay, reconciliation to seek, forgiveness to ask, and healing to receive. We look not only for justice “out there,” but must turn the lens on ourselves as well – on our daily patterns of life and on our treatment of and attitudes toward others. Restorative justice is an invitation to renewal in communities and individuals as well as procedures and programs. Transformation of the world begins with transformation of ourselves.⁴⁰

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Similarly, Michael Hadley concedes that restorative justice “requires all of us to come to grips with who we are, what we have done, and what we can become in the fullness of our humanity.”⁴¹

So the primary optimism is about the possibility of recompense, reconciliation, forgiveness, and healing in the context of the criminal offender-victim relationship. The application of this optimism to oneself is an earnest and well-meaning nod to the problems of hypocrisy that the primary optimism creates.

Thus the stumbling block for me came with my recognition of my own inability to put myself forward with a straight face as a competent participant in reconciliation, healing, and forgiveness. On the one hand, it was clear to me that my zeal for restorative justice was springing, in part, from an essentially romantic desire to get in on this starry-eyed notion of right-relation that restorative justice was so sanguine about. Surely, if it could happen for murderers and the survivors of their victims, it could happen for me in my troubled relationships fraught with petty, low-stakes conflicts and trivial insults. Surely, I too could participate in and experience reciprocal, mutual, and compassionate justice-in-relation.

Of course, it wasn't as if there were no “right-relations” in my life. Taking an honest stock of things, so long as I didn't go too far in idealizing this notion of right-relation, I could reasonably say that some of my relationships were pretty much “right.” But in looking at the right ones, it was also clear that they tended to have a number of other characteristics, such as: spontaneous affinity, shared purpose, shared interests, shared history, absence of a history of serious wrongdoing, mutual commitment to respectful engagement, and the investment of much (richly rewarded) time and effort, sensitivity, and hard work, with no small assistance from affection, humour, and fun. So these were the precious right ones. These were the ones that could plausibly be thought of in terms of some kind of “I-Thou” mutuality.

But there were lots of wrong ones too – lots of relationships that were marred by resentment, wrongdoing, bitterness, and small-minded pettiness on all sides. And what struck me, in reflecting on these relationships, was that I was far less cheery about the possibility for recompense, reconciliation, forgiveness, and healing in the context of these – my own comparatively trivial, low-stakes – “wrong relations” than I was in the context of relations between murderers, burglars, sexual abusers, even the most heinous of war criminals, and their victims. Something had to be seriously wrong here. Reflecting on the trivial problems in my botched relations, it was evident that, in most cases, I did not have the will or desire necessary to repair them. Moreover, reparation did not seem either likely or possible even if sought with the best of intentions. In any event, why not save my energy for those pretty-much-right relationships that

were not marred by any of these difficulties but nevertheless required lots of time and devotion to maintain? Wrong-relations seemed to have a kind of incorrigibility to them that made the project of repair a waste of time. So I had to admit that I personally was not up for sinking my energy into relational transformations.

How, then, was I to avoid the pessimism prompted by my own experience? And how was I to square this pessimism with the feel-good optimism about healing that had been induced in me by reading, rather than living, tales of restorative justice in the contexts of apartheid, ethnic cleansing, assault, rape, murder, robbery, and criminal negligence causing death?

Here I permitted my thoughts to follow a troubling trail: Could it be that right-relation stood a better chance of being restored when the wrongs to be overcome were big rather than trivial? Restorative justice advocate John Braithwaite says: "The more evil the crime the greater the opportunity for grace to inspire a transformative will to resist tyranny with compassion."⁴² So perhaps the wrongs that marred the rightness of *my* relations were too subtle – they just didn't constitute sufficiently jarring events – to serve as the powerful blast-off needed to propel a journey into wholeness and healing.

My thoughts strayed to a singularly wrong relation in my life. I thought to myself: "Perhaps if I were to break into her house and, well, I probably couldn't bring myself to actually assault her but let's say maybe I could just steal her TV or her stereo. Might we not then be forced into a cathartic and ultimately transformative encounter? And propelled by its momentum, might we not be flung out of this terrible lock of hostility and into healing and right-relation? Might we not then embark, with the support of a respectful community, upon a restorative journey toward equality, right-relation, and mutual respect for each other's dignity?" Heaven knows, there did not appear to be any other way forward. So, perhaps crime was the answer.

This curious logic got me more than a little worried. And what troubled me most was that I was not *exactly* misapplying the theory. The rhetoric of restorative justice *was* evoking a fantasy of idealized harmony in relationships between victims and perpetrators of crime – often purely injury-generated relationships – and not even remotely desired by either party, least of all by the victim. But the rhetoric of transformation, healing, repair, love, compassion, equality, and respect in the context of victim-wrongdoer relations was shamelessly bypassing the obvious: that relationships marred by big wrongs and serious violations *have* to be more difficult to fix than relationships marred by petty wrongs and trivial insults and annoyances. Moreover, this rhetoric was bypassing the perhaps even more incontrovertible fact that harmony, mutuality, equality, reciprocity, and respect are hard won even in our most significant and well-intentioned

relationships. The achievement of relations of equality and respect in the context of those core everyday relationships – the ones we put so much of our energy and intelligence into maintaining, the ones that receive the food, water, and sunshine of our spontaneous affection and desire – are themselves so painstakingly difficult and uncertain in success. So how can we – without hypocrisy – embrace a notion of justice grounded in a vision of right-relation, mutuality, reciprocity, equality, and respect between victims and perpetrators of unthinkable, unforgivable evils?

Thus confused, I turned to Derrida for help. His discussion of forgiveness offers one possible answer to this question. Justice-as-reconciliation can be seen as anticipating or requiring forgiveness,⁴³ and impossibility is, for Derrida, at the core of the very concept of forgiveness. If you don't have a grand-scale wrongdoing that defies the possibility of forgiveness, then it's not merely that you are in the minor leagues of forgiveness; you aren't even playing the game: "If one is only prepared to forgive what appears forgivable ... then the very idea of forgiveness would disappear ... From which comes the aporia, which can be described in its dry and implacable formality, without mercy: forgiveness forgives only the unforgivable. One cannot, or should not forgive; there is only forgiveness, if there is any, where there is the unforgivable. That is to say that forgiveness must announce itself as impossibility itself."⁴⁴ Forgiveness is a logical possibility only in respect of the inexpressible, unforgivable wrong that defies even the attempt to imagine a proportionate response. It does not require the contrition or apology of the wrongdoer or the possibility of punishment.⁴⁵ Nevertheless, Derrida commends forgiveness to us (or to those who have the opportunity to forgive: the victims of unforgivable wrong) as a worthy existential challenge. Worthy, it appears, primarily because of its richness as a paradoxical puzzle. Forgiveness is an impressive – possibility-defying – exercise of existential willpower. The audacious impossibility of forgiveness goads one to dare to try it. Forgiveness is a conceptual "attractive nuisance" (like the running bulldozer parked next to the school yard) for a paradox-crazed sensibility like Derrida's. It appeals as an exhilarating form of ethical bungee jumping.

Derrida's insights give us some sense of the potential intuitive appeal attaching to the idea that horrendous wrongs are, on some level, easier to repair and restore than trivial ones. There is no existential glory in forgiving the forgivable. Forgiveness of the unforgivable appeals because of its impossibility and its unquestionable status as a breathtaking achievement. Thus the worse the wrongdoing is, the greater is the power of the paradox of forgiveness to goad us into trying – if, like Derrida, we are inclined that way. The unavailability of a proportionate response likewise recommends forgiveness as a way out of an otherwise immobilizing

conundrum.⁴⁶ Forgiveness of the unthinkable egregious has more drama and is worth the effort because, if successful, it clearly counts as seriously impressive ethical and existential muscle flexing. Forgiveness of the garden variety crimes and misdemeanours of ordinary life is too low stakes to have any existential cachet. In Derrida's formulation, such wrongs don't even give rise to the opportunity to forgive. So why bother? Thus we see how it is possible to conclude that repair and reconciliation as effected between victims and perpetrators of horrific crimes are potentially more attainable than repair and reconciliation between the victims and perpetrators of commonplace wrongs. Forgiveness of the unforgivable evokes the possibility of existential sainthood. Forgiveness of the forgivable is too mediocre to have any really compelling payoff for the victim.

Thus it might be that restorative justice – insofar as it is seen as a challenge to forgive – would have more appeal in relation to unimaginable atrocities than in relation to run-of-the-mill wrongdoing. Yet Derrida is quick to point out that “one could never, in the ordinary sense of the words, found a politics or law on forgiveness.”⁴⁷ As Derrida rightly notes, for example, the South African Truth and Reconciliation Commission was founded on a legal category of amnesty completely distinct from any notion of forgiveness.⁴⁸ It was Desmond Tutu who later urged South Africans and the world to reinterpret the process in terms of the Christian vocabulary of repentance and forgiveness. But forgiveness, especially in Derrida's formulation, cannot be a matter of justice. It is a “hyperbolic ethics,” an “ethics beyond ethics”; it is the unthinkable supererogatory.⁴⁹ Thus it is outside the realm of justice.

Moreover, in Derrida's formulation, forgiveness – superdemanding though it may be – is, in some senses, not as demanding as restorative justice. Forgiveness for Derrida seems to be primarily an inner state, constituted by a once-off leap of will. But restorative justice requires something more. If forgiveness is a necessary element of restorative justice, it is only instrumentally so.⁵⁰ The significance of forgiveness to restorative justice lies in its possible contribution to the ultimate restorative goal of right-relation – that is, a lived relationship of mutual equality and respect. Most restorative justice advocates see repentance and forgiveness as important parts of the process toward right-relation; but it is right-relation, not forgiveness, that is equated with justice. Thus to achieve justice-as-repair, one must actually persevere in the relationship with the offender and work toward something better. This expectation is a constitutive element of restorative justice no matter what kind of wrong we are dealing with. Thus, even if Derrida helps us to see how forgiveness as an ethical feat might have greater allure the worse the wrongdoing, once we add the requirement of working things out in the relation between victim

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and perpetrator, we are thrown back on our initial puzzle. Why would one do it unless committed to an ethic of self-sacrifice and saintliness? And how can a system of justice be structured around a general demand for such supererogatory patience and devotion from victims?

The question of expenditure of resources alone would seem to rule out restorative justice as a viable possibility.⁵¹ The resources, care, and attention that serious and workable institutions of restorative justice would have to bestow on relationships either generated or marred by criminal violation would be enormous. When the right-relations that we have the good luck to create take so much of our time and energy, why would we sink a necessarily far greater amount of time and energy into the wrong ones? Why would anyone pour so many resources into these least promising of relations? Why would victims want to expend their time and energy on a bad and unwanted relationship that they would prefer to erase from their lives?⁵²

Though I have difficulty coming up with positive answers to these questions, it is apparent to me that the problem with my skepticism here may be merely my own moral failing. Restorative justice may well be for people who are much more patient than I; more committed to peace, healing, and harmony; less curmudgeonly; more pious; more morally inclined toward the endeavour of working things out for the sake of building community; more willing to persist with people who have wronged them. Yet (and I hope there is no self-righteousness in this claim), if the success of restorative justice is contingent upon consistently finding participants (victims, offenders, and community members) who are significantly more morally patient than I, then it is in some considerable trouble – and not because I am morally good but because neither am I a moral monster. I am pretty much the run of the moral mill. Yet restorative justice seems to anticipate that it will be drawing its participants (including its offenders) from the ranks of the morally supererogatory. I am worried about how such a system is to protect the interests of victims and even (although to a lesser extent) the interests of perpetrators of crime. I am concerned about a system of justice that asks victims in particular to take on the onerous task of working things out in relation to their offenders. But I am also worried about a system that purports to be able to deliver caring and compassionate assistance in effectively healing the admittedly terrible wounds suffered by offenders, wounds that go some way toward explaining the participation of offenders in wrongdoing.

Consider the following example. Restorative justice proponent Herman Bianchi tells a story of two young men who had brutally assaulted a cab driver.⁵³ The assault left the victim permanently confined to a wheelchair. The assailants were arrested. While awaiting trial, however, they became extremely remorseful and very much wanted to make reparations to the

victim. Their lawyer suggested that they write the victim a letter. They then wrote to the victim, offering to take care of him for twenty-five years as compensation for the harm they had done. The victim did not answer the first letter, so the perpetrators wrote to him again. The victim was initially very skeptical about the offer, but the victim's friends were enthusiastic and persuaded him to accept, assuring him that the offenders "will do their utmost to make your life bearable." The victim was convinced by his friends' arguments and accepted the offer.

Bianchi celebrates the agreement as a restorative move from damage to repair, from wrong-relation to right-relation, from wrongdoing to true penitence and meaningful accountability: "This is now a wonderful case as it should be. This is divine justice. Now, just do it!" However, the perpetrators, whom we are to assume are not particularly wealthy, would not be able to care for their victim were they in jail, so the agreement needed ratification from the judge. But the judge refused, finding that the victim's consent did not obviate the need for punishment; other potential assailants needed to be taught a lesson. Bianchi laments the judge's refusal to grant a stay of proceedings against the two offenders and to allow the agreement to be put into practice. He also bemoans the refusal of our system to support this restorative solution, arguing that the default solution that our system offers – the offenders go to prison, and the victim is supported by the state in an institution – exacerbates and perpetuates the damage to all concerned. Bianchi's position seems compelling enough. At a glance, the plan seems to be a perfect example of restoration of balance in the relation between victim and perpetrator.

Now, the story as told does not give us any explanation of what it would mean for the perpetrators to "take care of" the victim for twenty-five years, and it asks us to assume that the victim accepted the offer without any further clarification – apart from the interpretation offered by his friends (who had presumably never met the perpetrators) that the offenders meant to "do their utmost to make his life bearable." In all events, we can assume that the arrangement would require extensive close contact between the perpetrators and the victim. Depending on the degree of the victim's disability, he might need something close to twenty-four-hour care, which would most likely require that the perpetrators live with the victim.

As Bianchi's research demonstrates, this kind of response to crime has its historical precedents.⁵⁴ Feuding cultures provide interesting support for the basic idea that meaningful reparations can be made when a wrongdoer voluntarily agrees to care for the victim or the victim's dependents.⁵⁵ This idea also gleans some historical support from the work of William Ian Miller. Miller notes that in medieval Iceland wrongdoers would commonly agree to foster one or more of the victim's children as a means of

pacification. Miller describes an incident in the sagas where “Sturla forced his young son on a man who had sold him wormy meal.”⁵⁶ By fostering children belonging to a victim, the wrongdoer was relieving the victim of the financial burden of feeding the child. Significantly, he was also symbolically accepting a one-down status in relation to the victim since, in the context of medieval Icelandic culture, “he who fosters another’s child is always considered the lesser man.”⁵⁷ Yet even in a culture where such fosterage was an accepted means of offering reparation and effecting reconciliation, Miller notes that the practice must give us a pang of anxiety about the fate of the poor child. How could this father so cavalierly send his son into the house of the man who was his enemy? Yet Miller concludes with the assurance that nothing in the sagas suggests that such children were treated at all like hostages: “The children, it seems, were treated no differently than any other child would have been.”⁵⁸ Means of caring for children were already in place in the households; thus the foster children could simply take up an equal place with the other children.

This arrangement seems all very nice. But can we apply this cheery picture to our case of the disabled man and his two assailants? Imagine living for even one week as a disabled person in the same space as the two men who have caused your misery by brutally assaulting you – with men who have no skills in the care of the disabled, whose general “life skills” are likely to be less than optimal, and for whom your presence can only be an annoying and possibly painful reminder of their guilt. I fear that the outcome of this story, even at its most optimistic, would likely resemble the predictable tale of the well-meaning person who, in a rush of compassion, decides to care for an abandoned puppy only to find weeks later that it is far too much to handle and that its presence has become a source of overwhelming frustration and hostility. Even if some extraordinary victim might wholeheartedly take on the risks of such a vulnerable life, can we, in good conscience (and could this cab driver’s friends in good conscience), support a system that would encourage the subjection of victims to this kind of intense intimacy with those who have harmed them? How can we endorse a system of justice that rests on the prediction that equality, mutuality, reciprocity, and respect will be achieved in such relationships?

It is doubtful that the fosterage practised by such a profoundly communal people and culture as that of medieval Iceland can really serve as an adequate precedent or inspiration for similar practices in modern society. Nor does a relationship as hopelessly unpromising as that between the victim and the wrongdoers in Bianchi’s story provide a stable foundation for the creation of a more cohesive community. There is no good reason to feel any less anxious about the fate of the disabled man’s living

in such prolonged intimacy with his assailants than we might about the fate of the Icelandic children going off to be cared for in the houses of their parents' enemies.

Before leaving this anecdote, let's consider it from a slightly different angle. Let's imagine that the perpetrators were very wealthy men. And let's then imagine that instead of extending this imprecise offer "to take care of him for twenty-five years," the perpetrators made a very precise, and indeed far better, offer of, let's say, three million dollars to provide the victim with professional home care for life, compensation for pain and suffering, and so forth. Now one would assume that, under our present system, if such a payment were made spontaneously by the perpetrators, this gesture would figure as a mitigating factor in a judge's determination of the appropriate criminal punishment. But to conclude that the offer of monetary compensation should completely extinguish the state's obligation to proceed with the criminal charges (which Bianchi's story seems to entail) would collapse the present system of a dual civil action and criminal prosecution into a single civil action. As long as the perpetrators were in a position to pay compensation, they would be excused, as it were, from criminal prosecution. But what if the perpetrators were not in a position to pay compensation, which would seem to be the case in the story as told? It appears that the restorative solution would then also collapse the criminal prosecution into a civil action but would allow the impecunious offender to pay by working for the victim.

This arrangement, of course, is an ancient practice tried and true. It is found, for example, in the Bible, the laws of Hammurabi, and Roman law. It is called debt-slavery.⁵⁹ Where an offender was unable to pay compensation to a victim or to pay a debt owed to a creditor, he was made to fulfill the obligation by handing over the only thing he did have: his body and its labour. In other words, he became the slave of the victim or creditor. We can easily read the story of the cab driver and his assailants in a similar light. Presumably, any agreement to be ratified by the judge would have to provide for the consequences of breach. The perpetrators could not simply decide after a year or two that they didn't much like the arrangement and preferred not to look after the victim. One would assume that if the perpetrators were to default on the agreement, the criminal jurisdiction would be resurrected, and the perpetrators would either honour the agreement or go to jail. It would appear, then, that what is being promoted in the story is an arrangement between victim and perpetrators in which either the perpetrators continue to work for the victim or suffer incarceration.

We should also note that such an arrangement, if universalized, would give rise to a significant disparity in the treatment of rich and poor offenders. The present system, of course, has wealth disparity to be sure. Things

like quality of representation, prosecutorial zeal, and judicial sympathy are not distributed evenly across class lines. But, to the extent that our system prosecutes them at all, it potentially makes the rich pay twice: once by subjecting them to criminal punishment and again by requiring them to pay civil damages to compensate their victims. Under our system, the impecunious offender can pay only once through criminal punishment. The story of the cab driver and his assailants, inasmuch as it is being offered as a model for a system of justice, would risk a different and significant inequity between rich and poor. The story writ large would give rise to a system that treated poor offenders more harshly than their wealthy counterparts. The repentant rich would be able to pay up without doing time, but the penitential poor, those without the option of paying-up, most likely would have to do time either as the employee/caretaker of the victim or in prison.

Given these difficulties, why does Bianchi's story remain nevertheless so oddly persuasive and even moving? I suggest that the appeal of this story depends largely on the judge's rejection of the plan.⁶⁰ The momentum of the story takes our imaginative focus off the details of what such an arrangement would really be like for the victim and the perpetrators. It is only because we give superficial imaginative consideration to the rejected restorative fantasy that we find the overall vision of restorative justice in the story persuasive.

Admittedly, not all or even most restorative solutions anticipate this kind of ongoing intimate bond (or bondage) between victim and offender. Yet the theory, in its idealization of equality and respect in the relationship between victim and offender, and many of the testimonial success stories of restorative justice tend to envision some kind of amiable optimality in the victim-offender relation. The concepts of mutuality, reciprocity, healing, equality, and respect to be achieved between victim and offender may be staggeringly vague and open to many divergent conceptions, but all these conceptions reach toward a vision of shared satisfaction between victim and offender.⁶¹

The seductive vision of restorative justice seems, therefore, to lie in a skilful deployment – through theory and story – of cheerful fantasies of happy endings in the victim-offender relation, emotional healing, closure, right-relation, and respectful community. Yet, as with all seductions, the fantasies that lure us in tend to be very different from the realities that unfold.⁶² And the grandness of the idealism in these restorative fantasies, in and of itself, ought to give us pause.

Moreover, the contexts in which restorative justice is most vigorously and successfully promoted are the same contexts in which other powerful emotional pulls are inducing us to, as Jonathan Allen again aptly puts it, “confuse aspiration with prediction.”⁶³ Enthusiasm about restorative

justice thrives best in contexts already conducive to optimistic fantasy. For example, South Africans of all races experienced a heady idealism at the end of the apartheid regime. There was an exuberant sense that South Africa, newly freed of the yoke of apartheid, would surely become a country of unprecedented cultural richness, economic prosperity, and political enlightenment. This exuberance, in part, inspired the wave of willingness to go along with the vision of justice offered by the Truth and Reconciliation Commission. The shared anticipation of a glorious new era of national flourishing opened South Africans to an understanding of justice that was sunny and forward-looking. Apartheid had been a long and shameful yesterday, and to focus national energy on punishing its past might destroy the possibility of the brilliant tomorrow just beyond the horizon.

This mood factor also surfaces in our assessment of other contexts in which restorative justice might be appropriate. Consider, for example, two common settings in which restorative justice is advocated: Aboriginal and juvenile crime. Take the Aboriginal context first. The restorative justice movement in Aboriginal contexts is bound up with both the political push toward Aboriginal self-government and a more general renaissance of traditional Aboriginal culture.⁶⁴ The distant Aboriginal past evokes a spiritually enlightened culture that fosters harmonious interconnections between people and nature.⁶⁵ The recent Aboriginal past represents oppression and pollution by a spiritually inferior white culture that privileged acquisition and egoism over shared purpose and relationship. The Aboriginal future promises a proud renewal of traditional values and practices. Thus, in the Aboriginal context, as in South Africa, restorative justice is supported by an atmosphere of shared anticipation of a soon-to-be-celebrated future. Optimism that Aboriginal peoples are on their way out of a toxic condition of oppression – a condition that contributed significantly to high crime rates in Aboriginal communities – supports the idea that healing of relations between victim and offender is an appropriate and viable response to wrongdoing.

In the context of juvenile crime, youth itself supports an optimistic focus on the future. We are more willing to see the wrongdoing of the young as attributable to lack of maturity rather than to actual malevolence or viciousness. The juvenile criminal's whole life stretches out before him. We are reluctant to abandon hope either for the possibility of spontaneous change of a young offender's ways or for their improvement through better education and socialization.⁶⁶ To presume that a young offender doesn't deserve a chance to make amends seems culpably cynical – just as it seems culpably naive to give adult offenders the benefit of the same set of doubts. The fairness of this disparity in our assessment of the young and the older is beside the point. Youth puts us in the

optimistic mood necessary for restorative justice.⁶⁷ It opens us up to the idea that the appropriate response to wrongdoing is to try to educate offenders about the harm they have done, attempt to engender a compassionate response both in offenders for their victims and in victims for their offenders, and give the young every reasonable chance to redeem themselves.

Again the emotional pulls that render us susceptible to optimistic fantasy and aspiration do not necessarily map onto the practical conditions that would make restorative healing and repair more likely. The probability of the success of restorative justice seems to depend primarily upon the character and resources of the offender.⁶⁸ Restorative justice is possibly the perfect solution to crime where the offenders have the capacity for serious critical self-reflection, the resources and ability to repair the damage caused, and a bona fide desire, along with sufficient self-command, to behave respectfully in their relations with their victims and their communities in the future. It is difficult to imagine how one could isolate particular contexts or types of crime in which one was likely to find a critical mass of these good bad guys capable of transformation and participation in relations of equality and respect.⁶⁹ Moreover, it would seem that in promoting restorative justice at the theoretical level and in seeking victims' consent to restorative processes at the practical level, we are asking victims to wager that their particular offenders fall into this category of redeemable rogues capable of taking responsibility for their actions and making meaningful amends.

Of course, there are many more factors beyond just the character of the offender that will influence the success or failure of restorative justice: whether the damage is reparable, whether the victim is amenable to forgiveness, whether the victim supports the goal of re-establishing the worth of the offender or continues to desire the offender's suffering. Yet, at the end of the day, the primary control over the success or failure of restorative justice seems to lie in the hands of offenders. Nevertheless, the credibility of restorative justice is absolutely contingent upon its ability to deliver some version of its promise of equality, respect, mutuality, reciprocity, and healing in the relation between victim, offender, and community.

Aims of the Book

The primary aim of this book is to examine critically the aspiration of restorative justice to effect a practical and theoretical reconciliation between the values of love and compassion, on the one hand, and justice and accountability, on the other. Restorative justice offers a vision of justice as "tough love." It also, however, places an extraordinary amount of faith in the idea that compassion itself, when extended toward and

effected between victims and wrongdoers, will have an overwhelming and magically transformative power in the direction of justice. The book critically examines the emotional, spiritual, dramatic, and rhetorical pulls behind the aspiration to reconcile love and justice. It takes this aspiration to be the source of enthusiasm and excitement behind the restorative justice movement. In doing so it attempts to take seriously Jonathan Allen's charge that restorative justice confuses aspiration with prediction.⁷⁰ I take the view here that to separate aspiration from prediction, as we ought, we first need to unearth the affective foundations of these aspirations — that is, understand why the ideal of a harmonious and compassionate solution to the problem of injustice is compelling. The book, therefore, attempts to investigate and critique the multiple emotive pulls that draw us into zeal about justice-as-repair and right-relation. It critically examines the longings that inspire the wishful thinking of restorative justice. Moreover, it seeks to expose much of this rhetoric and the aspirations it inspires as culpably sentimental and dangerously naive.

The book assumes that the emotional and theoretical aspects of restorative justice are inextricably intertwined. Such is the case, in part, because so many of the philosophical roots of restorative justice are theological. Pulls toward and away from institutions of restorative justice are bound up with our feelings about a relationship to the divine. The more we are emotionally drawn to a religious ethic of love, the more we will be motivated to struggle to make restorative justice work.⁷¹ The more we have both a longing for some conflation of love or compassion and justice (and some theoretical framework within which to situate the possibility of that conflation), the more we will be motivated to persist in the project of justice-as-repair. The more we are committed to an ethic of nonviolence, the more we suffer at the thought of inflicting suffering on others.⁷² The more we are drawn to the value of harmony, the more the aspirations of restorative institutions will appear worthwhile to us.

The intertwining of the theoretical and emotional aspects of restorative justice is also explained in part by the fact that so much of the advocacy of restorative justice comes in the form of examples or success stories. Since the theory of restorative justice locates justice in the experience of relationship, restorative justice proponents often lead with accounts of people's experiences of restorative success. These accounts are meant to and often do elicit an emotionally open-hearted and optimistic response. These restorative success stories (like so much of the self-help industry) seek to induce people to buy into a theory on the basis of selective and simplified examples of cases in which adherence to the theory purportedly worked miracles.⁷³

A third aspect of the enmeshment of theory and emotion in restorative justice derives from the fact that so much of restorative rhetoric

explicitly requests that we access or cultivate emotional states of compassion and love when thinking about wrongdoing and justice.

The Goal of Right-Relation: The Single Unique Feature of Restorative Justice

I do not attempt to put forward a comprehensive definition of restorative justice. Yet I do attempt to engage with restorative justice as a distinctive approach to wrongdoing. With this objective, I focus particularly on its embrace of the notion of right-relation as the essence of justice and on how this understanding of justice leads to the even more idealistic attempt to harmonize the restorative understanding of justice with an understanding of love. A few words of explanation are needed here to clarify my focus on the idealized notion of right-relation as *the* distinctive element of restorative justice, and on its link to the restorative aspiration to reconcile love and justice.

Restorative justice is not the same thing as plain old alternative dispute resolution or mediation, though it shares aspects of these. Its aspirations exceed those of mere corrective justice, though clearly it aspires to correct. It is quite different from deterrence and rehabilitation theory, though it prides itself on its ability to help offenders both to internalize and to act in accordance with the view that crime doesn't pay. Like retributivism, restorative justice seeks to rectify the imbalance created by crime, yet it abhors the retributive notion that deliberate infliction of suffering on the wrongdoer helps to restore that equilibrium.⁷⁴

In its rejection of the wilful infliction of suffering on the offender, restorative justice does resemble deterrence and rehabilitation theories about the best way to respond to crime. Yet deterrence and rehabilitation theories, unlike restorative justice, judge that we ought to bracket the question of justice per se and concentrate on the question of how to bring about change for the future. In other words, we should forget about pouring our energy into making past wrongs right. Rather, we should focus our efforts on making sure the wrongdoing doesn't happen again. As *A Clockwork Orange* – Stanley Kubrick's superdisturbing film about the ultimate mode of deterrence and rehabilitation – puts it: The point about "the Ludovico treatment" is "that it works." The offender is reoriented toward nonviolence. Justice, by contrast, is not the point.

Restorative justice, however, *is* a theory of *justice*.⁷⁵ Though it is primarily future oriented, it cares, as a matter of principle, about improving the future by addressing (if not redressing) past wrongs. Reduced recidivism and rehabilitation may be the happy, inevitable by-products of the restorative understanding of justice, but they are not its first-order ends.⁷⁶ Thus, though it rejects wilful infliction of suffering on an offender as having justice value, restorative justice also shares important ground with

retributive justice. Both insist that wrongs must be *put right*. Both see an essential relation between justice and reciprocity. Yet restorative justice is committed to a radical debunking of the retributive idea that proportionate suffering deliberately inflicted on the offender has intrinsic justice value. It seeks to right the balance, to be sure, yet it holds that retributive theory mistakenly (even arbitrarily) identifies one particular practice – punishment – with the goal of rectification.⁷⁷ Restorative justice seeks creative, positive, nonviolent, and even noncoercive ways of putting things right. Moreover, it holds that the appropriate means of righting the balance are highly context-sensitive. Restorative justice is necessarily vague about what is going to count as restoration of the balance in any given situation. The theory must remain underdetermined on this point because what will bring about the restoration of social equilibrium in the context of any given wrongdoing is dependent entirely on the social, political, economic, and cultural relationships in play. As Braithwaite puts it: “One answer to the ‘What is to be restored?’ question is whatever dimensions of restoration matter to the victims, offenders, and communities affected by the crime. Stakeholder deliberation determines what restoration means in a specific context.”⁷⁸ Yet there are also some basic procedural elements that restorative justice embraces as a matter of principle. In particular, it is committed to encounter and reciprocal truth-telling as effected between the victim, the offender, and their communities as an essential step toward the goal of justice-as-repair.

Restorative justice also shares much common ground with corrective justice in the Aristotelian sense.⁷⁹ Most importantly it wholeheartedly embraces the idea that the offender should compensate the victim for the losses suffered as a result of the wrongdoing – that the offender should disgorge and restore to the victim the advantage gained from the wrong, thus making the victim whole again. Corrective justice, like restorative justice, does not place value on the wilful infliction of suffering on the offender but focuses on repair of the victim’s loss. Yet the ambitions of restorative justice are both less precise and more expansive than those of corrective justice. Restorative means of repair of relations can achieve justice despite their departure from the strict transfer of wrongful gain back to the victim. In other words, the impossibility of strict correction does not preclude restorative justice from being achieved. Where the wrongdoer cannot compensate the victim for the wrong done, either because the wrongdoer does not have (or no longer has) the means to do so or because the loss does not admit of material compensation, things can still be put right by other means – for example, by apology and forgiveness.⁸⁰ Further distinguishing restorative justice from corrective justice is its effort to widen the net of our concern in understanding who is affected by wrongdoing. Corrective justice tends to narrow the focus

to the primary victim and wrongdoer. Restorative justice, by contrast, seeks to involve and restore all members of the community potentially affected by the wrongdoing.⁸¹

Moreover, restorative justice, though it encourages compensation, is not satisfied with mere compensation understood as a return to the *status quo ante*.⁸² It requires – as a matter of justice – something more. It requires that we build better, more respectful, more mutual relationships than those that existed prior to the wrong. It reaches toward an idealized state of right-relationship as its model of the just. The justice to be restored is the experience of relationships of mutuality, equality, and respect in community.⁸³ And it is this extravagant ambition – this understanding of justice in terms of an idealized conception of right-relation – that is the single distinguishing element of restorative justice. All other aspects of restorative justice are drawn from elsewhere. The sense of the importance of face-to-face encounter is drawn from alternative dispute resolution and mediation theory, as is the idea that conflict belongs to the community as a whole and that the community ought to be included in its resolution. Repudiation of the wilful infliction of suffering on the offender as an intrinsic good is drawn from rehabilitation and deterrence theories of punishment and corrective justice. The idea that justice involves the restoration of a social equilibrium and a return to a situation of some form of reciprocity is drawn from retributive justice.

Thus the singularity of restorative justice lies in its ambitious and seemingly good-hearted aspiration to understand justice in terms of right-relation – in its aspiration to locate justice in the experience of relations of mutuality, equality, and respect. The degree of idealization involved in this understanding of justice as right-relation can be either intensified or downplayed. However, it is this notion of right-relation – and its potential associations with harmony, wholeness, caring, compassion, reciprocal regard, and mutual valuation of intrinsic worth – that paves the way toward a communion between the restorative understanding of justice and an (also idealized) notion of love. It is via this idea of right-relation that the aims of restorative justice often escalate into the aspiration to reconcile, and even conflate, our values, experiences, and practices of love and justice. Indeed, right-relation, explicated in terms of respect, mutuality, reciprocity, and regard, can serve equally well as a conception of love, and perhaps much better as a conception of love than of justice. In fact, restorative justice theory sees the notion of right-relation as mediating and harmonizing these two presumptively conflicting realms of love and justice. It is in this distinctive move that the case for restorative justice becomes tied to the age-old human hope for the convergence of love and justice. The purpose of this book is to explore the nuances of that hope and to attempt to expose it as not only illusory, but also dangerous.

Sources

The sources I draw from are varied. In relation to restorative justice itself, I draw from theorists such as Dutch criminologist Herman Bianchi, whose impassioned and charming style make him still one of the most compelling advocates of restorative justice. I also look to Howard Zehr, Daniel Van Ness, Karen Heetderks Strong, John Braithwaite, Charles Colson, Mark Umbreit, and Christopher Marshall, as well as to Michael L. Hadley's collection on the spiritual roots of restorative justice. I draw, to a considerable extent, on the coauthored work of Robert Howse and Jennifer Llewellyn, both of whom were involved in the South African Truth and Reconciliation Commission.⁸⁴ Their work remains, in my view, the most theoretically sophisticated and persuasive writing there is on the topic.

I also draw extensively on theoretical sources that deal not so much with restorative justice per se but nevertheless advance strong connections between love, compassion, fellow-feeling, mercy, and justice. Here, I take the work of Martha Nussbaum as a foil. To a large extent I am attempting to transplant Nussbaum's ideas into foreign soil. I am assuming that it is possible to uproot her articulation of the relations between love, eros, compassion, and fellow-feeling, on the one hand, and justice and morality, on the other, and plant them in the context of restorative justice.

The opposite theoretical pull for me is found in the writing of William Ian Miller. It is Miller's unapologetic sympathy for vengeful desire, more than any careful and measured defences of retributivism within our criminal justice system, that I find to be the most compelling lure away from the piety of restorative justice. Miller's work is not entirely hostile to restorative justice in the sense that it can be read as promoting the value of encounter between victim and offender as well as a conception of justice as grounded in reciprocity. However, his work also forces us to concede the dark side of these ideas: the inevitability that encounters between victim and offender will be fraught with feelings of mutual contempt, disgust, and desires for revenge; that reconciliation between victim and offender will take place when both are motivated by powerful external and practical reasons for saying "uncle"; and that, to a considerable degree, justice-as-reciprocity will necessarily cash out in the currency of the infliction of reciprocal suffering.

Novelists are perhaps the most important source for this work. Restorative justice promotes itself on the basis of success stories and victim satisfaction surveys. If we immerse ourselves in the world of restorative justice narratives and testimonials, we acclimatize ourselves to their sensibility and are increasingly convinced by them. My intention in turning to novels is to break out of the world of stories generated by the restorative justice movement. Authors with more sophisticated, less evangelical

sensibilities generate stories that very often run counter to all the restorative justice intuitions. My purpose in turning to such stories is to ask whether these counter-stories resonate as more true to human experience than do the simplified stories that come out of the restorative justice movement.

I am convinced that we need the great novelists here because they have the ability to show us more facets of human personality and interaction than the professionalized and hence bowdlerized "I hear your anger" restorative justice culture is capable of perceiving or relating. I will try to show that stories from the pens of these writers, which so often contradict the premises of restorative justice, ring truer with our honest perception of ourselves and each other than do the stories that restorative justice asks us to buy as the foundation for a new conception of justice. Jane Austen, Saul Bellow, Charles Dickens, George Eliot, Mark Twain, and Sinclair Lewis are authors upon whose ability to perfectly capture sentiments I rely extensively.

The Road Map

A basic outline of the chapters proceeds as follows. In Chapter 2, "'Essentially and Only a Matter of Love': Justice and the Teachableness of Universal Love," I begin by setting out the multiple points of contact between the rhetoric of restorative justice and ideals of universal love and agape. From there I embark on a critique of the aspiration to reconcile love and justice, noting first its latent conservatism. Then I go on to compare the restorative justice aspiration to reconcile love and justice with the techniques of people like Mohandas K. Gandhi and Dr. Martin Luther King, Jr. I subsequently move to the problem of the cultivation of an inner state of love as a requisite of justice and question our ability to cultivate universal or brotherly love between perpetrator and victim in the context of wrongdoing.

Chapter 3, "Three Precarious Pillars of Restorative Optimism," looks at three interrelated aspects of the optimism inherent to restorative justice. First, it examines the restorative justice aspiration to change radically what we mean by justice. Restorative justice is optimistic that we can retain a notion of justice as fundamentally concerned about reciprocity, while at the same time debunking the notion that justice is achieved through punishment that imposes reciprocal harm. In the first part of this chapter, I examine and critique this element of restorative optimism. Next, I turn to the second pillar of restorative optimism: its sense that the offender's character is likely to change for the better as a result of the restorative process. Here again I attempt to question the foundations of that optimism. Finally, I turn to the third pillar of restorative optimism:

the idea that, supported by the restorative process, the victim will come into healing and meaningful recovery from the effects of the crime.

In Chapter 4, "Sentimental Justice: The Unearned Emotions of Restorative Catharsis," I begin by noting that some squeamishness about restorative justice and its aspiration to reconcile love and justice may be mere aesthetic distaste for the sentimental. Yet to object to theories or practices of justice on grounds of their sentimentality seems overly fastidious in an ethically impoverished way. It wrongly raises matters of taste to the level of matters of justice.⁸⁵ In this chapter, I ask whether sentimentality in a theory or practice of justice is necessarily a bad thing and ask whether what appears to be an essentially aesthetic distaste for the sentimental has any legitimate place in ethical or moral theory. I ultimately argue that there is indeed something wrong with a sentimental theory of justice. And I conclude by noting also that proponents often use sentimental storytelling as an (unscrupulous) means of boosting the so-called magic of restorative justice.

In Chapter 5, "Lovemaking Is Justice-Making': The Idealization of Eros and the Eroticization of Justice," I turn to the erotic in its relation to justice. Here I take up various strands of the idea that the erotic impulse is a primal energetic and psychological force capable of propelling us toward right-relation. I begin by looking at Martha Nussbaum's defence of the erotic as an ethical energy that brings us into a more lively sense of the other. From there I turn to a different but related argument for the relevance of desire to justice. Lesbian theologian Carter Heyward makes the claim that eros and justice are related and reconciled through the value of mutuality.⁸⁶ I conclude that the motivation behind these efforts to equate justice and the erotic is primarily to improve the public respectability of sexuality and, therefore, that sex stands to gain far more than justice in the association.

In the final chapter, "Compulsory Compassion: Justice, Fellow-Feeling, and the Restorative Encounter," I take a comprehensive look at the relation between compassion and justice. I begin by taking up Martha Nussbaum's claim that Aristotle's discussion of pity in *The Rhetoric* provides the foundation for a rationalist account of compassion as a vital element of justice in adjudication.⁸⁷ Having critically examined some of the problems with positing a major role for compassion in adjudication, I go on to note that the ideally anticipated role of compassion in restorative justice is drastically different from that envisioned by advocates of compassionate judging. In the second part of this chapter, I attempt to draw a picture of the kind of compassion restorative justice anticipates. In the third part of the chapter, I note that the notion of compassion relied on by restorative justice is grounded in a practice of egalitarian humility and

must be deliberately cultivated. Here I discuss the extreme emotional stamina and commitment required to cultivate the authentic capacity for such compassion as well as the emotional and physical risks entailed in extending that compassion to a potentially dangerous opponent.

In the Epilogue, "Restorative Utopias – 'The Fire with Which We Must Play'?" I conclude with grave reservations about restorative justice, which are grounded not so much in its utopianism but in its failure to provide us with a desirable vision of utopia.

That is the road map. Let's proceed now to explore these disparate domains of love and justice and to examine how restorative justice attempts to reconcile the two.