

## Narrative and “Compulsory Compassion”

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ANNALISE ACORN. *Compulsory Compassion: A Critique of Restorative Justice*. Vancouver: University of British Columbia Press, 2004. Pp. 224.

This article takes its title from Annalise Acorn’s critique of restorative justice entitled *Compulsory Compassion*, in which she deconstructs rhetorics and narratives of restorative justice. After considering the meanings of restorative justice, the first part of this article argues that if something like compassion is a restorative justice value, then restorative processes seek to secure it by creating spaces where compassionate narrative is nurtured. We then consider Acorn’s competing narratives.

*Compulsory Compassion* is the most beautifully written of the now countless books on restorative justice. It is also the most foundational critique yet to appear. Acorn once was committed to the restorative justice movement, but then became disenchanted. Her critique argues that restorative justice has elements of hypocrisy because it lacks authenticity, fails to accommodate peoples’ natural needs to give wrongdoers their just deserts, expects compassion in circumstances where this is unreasonable and oppressive, sentimentally links love to justice, and fails to come to grips with the satisfaction some people derive from dominating others.

### THE AMBIGUOUS MEANING OF RESTORATIVE JUSTICE

Critics of restorative justice (e.g., Ashworth 1998; von Hirsch et al. 2003) say that there is a certain incoherence about it compared to normatively precise theories of criminal justice like retributivism or deterrence. They rightly say that

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its values framework is not settled and clear. It is not only about a shift from valorizing punishment to healing or restoration: it also seems to be about a muddle of other values such as empowerment, social support, undominated dialogue, safety, storytelling, and many more. Competing visions of what are good restorative practices are almost as diverse. Some favor one-on-one victim-offender mediation with highly professionalised mediators of "conflicts." Others favor more highly politicized, deprofessionalized and participatory healing circles, which reject the idea that something like sexual assault could be conceived as a conflict; it must be seen as an injustice that engages the passions of a whole community; restorative spaces must create opportunities to make the personal political (Coker 1999).

We scholars involved in the development of restorative justice theories learn from such critiques. They can cause despair that we do not know what we are talking about. Or they can provide resources for research that tests the empirical effects of restorative justice programs with this versus that value framing, or this versus that procedure for communication among stakeholders in an injustice. When we emphasise restorative *values* of one kind or another, we are more likely to study what changes when nonrestorative institutions like courts enact more restorative values, as when they pause to give law-breakers an opportunity to apologize and victims an opportunity to forgive, should they wish to. When we emphasize restorative *processes*, we are more likely to study what changes when institutions like courts are replaced by restorative justice conferences where all the stakeholders in an injustice sit in a circle to discuss the consequences of the injustice and what might be done to repair the harm (Strang 2002; Roche 2003), what changes when truth and reconciliation commissions supplant Nuremburg-type trials.

Restorative justice advocates will do better at responding to critics who point to the incoherence of the concept, when research shows value X should be dropped from the list of restorative justice values because programs framed by X tend to have shocking empirical effects in inflaming different kinds of injustice. Conceived this way, restorative justice theory building is an iterative process of reconfiguring what justice means and what restoration means. This can reach the point where, on some theoretical accounts, it is better to abandon one or the other word, as in the theory of restorative *practices* (Wachtel and McCold 2001)<sup>1</sup> or the theory of *transformative* justice (Morris 1995).<sup>2</sup> The point and

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1. The restorative practices tradition deals with problems and incidents that may not involve any crime or injustice. For example, restorative practices in schools are often conceived as practices for restoring connectedness or social capital in school communities. See the International Institute for Restorative Practices website at <http://www.iirp.org/>.

2. The transformative justice tradition emphasizes the dangers of restoring relationships that were unjust to begin with. Against this, when Desmond Tutu (1999) spoke of restorative justice through truth and reconciliation in South Africa, he did not mean restoring Apartheid. He meant transforming Apartheid to restore more basic values of human dignity, social justice, and mutual respect.

the excitement is about a radical retheorizing of the justice field, and fresh experiments in ways of confronting injustice, confronting concrete problems like crime, war, tort, tax avoidance, or bullying.

Philosophically, restorative justice can therefore be seen in the pragmatist tradition—experimental, with values adjusted in light of experience. Explanatory theory (ordered sets of propositions about the way the world is) and normative theory (ordered propositions about the way the world ought to be) are integrated, on this account of restorative justice epistemology. Good normative theory enriches explanatory theory and vice versa (Pettit and Braithwaite 2000). Constructing narratives is at the heart of how the normative and explanatory concepts of restorative justice are brought to life as the one informs the other.

## NARRATIVE

Iris Young (2000) has been an influential thinker about the link between narrative and justice. Storytelling for Young can be “an important bridge between the mute experience of being wronged and political arguments about justice” (72). Human beings tend to make sense of their experience of injustice through an architecture of narrative. Just as psychotherapy can be a form of narrative repair, when people cannot construct an adaptive story about their worries, restorative justice can be about restorying lives in disarray because of a crime. They are renarrated as the lives of people who have survived, transcended, or repaired injustice (Zehr 1990; Pranis 2001; Neimeyer and Tschudi 2003). As a general matter, the nonnarrative processing of human experience might be somewhat exceptional (Neimeyer and Levitt 2001). Courtrooms and law books can undermine real worlds of justice because they too ruthlessly crush narratives about new injustices (with old abstractions). Narratives are meaning-making; in addition to giving meaning to personal identities like “reformed drug abuser” or “rape survivor,” they can give new meaning to justice itself.

A restorative institution such as a Truth and Reconciliation Commission (there have been twenty-five now) makes it easier to understand how a justice institution can turn the private troubles of victims into public issues (but see Stanley (2005) on the suppressed recognition of women’s truth in the East Timor Commission, for example). Public Commission hearings in which victims confront perpetrators attract more attention than the average court case. The stature of a leader like Nelson Mandela resides in his legacy of restorying South Africa as a nation that has transcended an unjust institution; whatever their race, all South Africans begin to share the identity that they have all been victims of Apartheid, all impoverished by it to something less human. With less grand restorative processes, such as care and protection conferences for children, restorative justice theory and practice needs to

develop a more sophisticated meta regulation of justice (Parker 1999; Braithwaite 2005) to bubble up the justice of the people into the justice of the law. For individuals, for families, schools, companies, nations, relearning of identity through a transformative narrative can flip posttraumatic stress to posttraumatic growth (Tedeschi, Park, and Calhoun 1998; Neimeyer and Tschudi 2003). Of course, narrative disruption occurs more often at the hands of a hegemonic story that subjugates citizens into identities that crush their growth capabilities (Neimeyer 2000). Yet if it is stories that constitute dominating discourses, it also can be stories that constitute discourses of hope, liberation, and justice.

We also need the nuance here to appreciate Shearing and Ericson's (1991) idea that organizations mostly do not succeed in achieving objectives by rules, procedures, and sanctions to get their members to enact them; rather they mostly do so by cultivating the right sensibilities in their members. Shearing and Ericson see police culture, for example, not as a rulebook, but as a storybook. So if a police department wants to provoke less violence and resistance, it is best to do so narratively: "act like you are on holidays"—thence the nonprovocative sensibility is more likely to issue. The same idea is found in indigenous valorizing of the presence in healing circles of elders with "mana," or spiritual depth combined with profound embodiment of justice in their narratives and gestures.

Kay Pranis (2001) says you can tell how much power a person has by how many people listen to their stories. When President Bush tells a story, many tune in. When it is the beggar on the street, few stop to listen. It follows that one of the simplest strategies of empowerment is to listen to the stories of those without power. Pranis argues, restorative justice empowers in just that way, by institutionalizing listening to people who are normally not taken seriously. In many restorative traditions, especially those of the West Coast of the United States, this is reinforced by a strengths-based philosophy: participants are asked to record what they hear to be the strengths of this individual, this family, that school, to build upon in constructing a just peace (Sivak, Green, and Kook 2000).

In restorative justice conferences, after each individual has their stories listened to, new stories that allow new identities are coauthored by a plurality of stakeholders in the injustice. The more participatory circles allow renarrations of identities in microinstitutions of deliberative democracy. Neimeyer and Tschudi (2003, 171–72) suggest that restorative justice provides narrative alternatives to dominant legal discourse that: "(1) assist persons in finding an authorial voice, (2) invite meaningful co-authorship of life narratives by ensuring the participation of both protagonists and supporting characters, and (3) recruit a relevant audience for the performance of a new narrative that transforms the conflict." The coauthorship produces a narrative in many voices, each appropriating and transforming the others in ways unlikely to be akin to simple morality tales offered to children. Rather, the circle's

story is likely not to have clear villains and heroes, "but instead will engender a greater humility and tolerance for the vicissitudes of life on the part of all participants" (Niemeyer and Tschudi 2003, 177). A key idea of restorative justice theory is that conarration can collectively affirm a norm, vindicate a victim, and denounce the evil of an act without labeling any person as a villain. A political objective of restorative justice is to persuade harsher elements in the victims' rights movement that this path to victim vindication is more meaningful, satisfying, and just than punitive excess.

## RESTORATIVE JUSTICE, PEACE BUILDING, AND PLURAL ARENAS OF INJUSTICE

There is a global social movement for restorative justice that is becoming increasingly intertwined with the peace movement. In July 2005 the UN Security Council was briefed by senior UN staff on the lessons learned from the peace process in Bougainville and Papua New Guinea, which ended a war that had taken perhaps 15,000 lives. The most important lessons were about "breaking spears and mending hearts" (Howley 2002), about restorative justice attuned to local tradition for building long-term peace as opposed to just short-term ceasefires.<sup>3</sup>

It is its peace and reconciliation dimensions that, at this historical moment, are giving the social movement for restorative justice a new lease of vitality. This I will argue is an important oversight in Acorn's (2004) analysis of the cultural politics of restorative justice. Acorn views restorative justice narrowly through the lens of a criminal lawyer examining writings of criminologists, rather than more broadly as a social movement about the politics of reconciliation in contexts that vary from the care and protection of children in families, to education, race relations, and, most importantly, peace building. If we look at what the leading training organizations in restorative justice in North America actually do, the International Institute of Restorative Practices does more work for the school market than the criminal justice market, Eastern Mennonite University does more peace building training than criminal justice training, and the American Humane Society does more training in restorative practices for the care and protection of children than in youth justice. As interesting as the critique of "compulsory compassion" is in respect of criminal law, one is simply left wondering whether Acorn would think in the same way about the non-criminal-law manifestations of restorative justice.

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3. "UN official says with autonomous government in place in Bougainville, UN mandate complete." July 13, 2005. United Nations: New York. At <http://www.un.org/apps/news/story.asp?NewsID=14908&Cr=bougainville&Cr1=>.

With more historical hindsight, the South African Truth and Reconciliation Commission (much critiqued in Acorn's text), for all its limits and failings, looks increasingly like the foundation of a more promising approach to peace building than that promoted by the U.S. state. From Somalia to Iraq, the limitations of the kill-Aideed, kill-Hussein mentality of the Weinberger-Powell doctrine of peacekeeping, looks, to most of the world, more flawed than at any point in recent history. The systematic multivariate empirical evidence is that UN peacekeeping and peace building operations in war-torn states succeed more often than fail in improving future prospects of peace, especially when peace operations are multidimensional efforts that include assistance with development and national reconciliation (Doyle and Sambanis 2000).

The core insight of the South African Commission (Minow 1998; Gibson 2004), building on prior experience in Latin America, was that impunity might not be replaced primarily with punishment, but with truth and reconciliation based on empowerment of victims through testimony and storytelling that might reconfigure national memory. This insight not only looks more promising with the benefit of more historical hindsight, it also appears more so from the most recent empirical work (Gibson 2004). Peace operations in the South Pacific—following civil wars in Bougainville, the Solomons, and Timor Leste—have drawn important lessons from South Africa and Latin American peace building in states like El Salvador. Flawed as these peace operations were in many ways, including some of the ways fingered in Acorn's text, in each of these Pacific cases, as in South Africa, peace processes seem to have flipped states from civil war to more or less permanent peace, as rash a projection as this is.

The greatest importance of restorative justice to the world is that evidence-based development of practice in a place like New Zealand has proved surprisingly useful, with considerable adaptation, as something that women's groups in Bougainville could advocate as part of their peace process (Spriggs 2004). When I talk to church groups about restorative justice, I find that what animates them is less R and D on restorative justice in Western criminal law, more the translation of restorative justice as a bottom-up complement to top-down peace operations. Annalise Acorn thinks the social movement vitality of restorative justice is more Californian—about New Age spirituality and sentimentality. I am seeing it as anti-Californian, in the sense of rejecting Hollywood's approach to controlling armed violence, whether on the streets of American cities or in Mogidishu. It is not that Acorn is completely wrong that some of the appeal of restorative justice is New Age. Perhaps it was considerably so in the early 1990s. But my sense is that reactionary, conservative Christians come out on a cold winter night to hear what a heretic has to say about restorative justice less because of the appeal of incense and Eastern mysticism and more because of their preference for Mandela and Tutu over Rambo and George W. Bush.

Of course, Americans reelected George W. Bush. The United States is not New Zealand (or other small democracies like Norway and Austria) where restorative justice has made significant inroads into punitive justice systems. Or Canada, Acorn’s home, where back in 2000 the Canadian government reported to the UN Congress on the Prevention of Crime and Treatment of Offenders in Vienna that 400 restorative justice programs had been established in the country. Acorn’s characterization of restorative justice will resonate in North America for those who see it as something that has taken off only in places like Vermont. For most of the 1990s, liberal Vermont and Minnesota were the states where a lot was happening with restorative justice in the United States. But Bazemore and Schiff’s (2005) recent National Inventory of Restorative Conferencing Programs for Youth found that nearly all U.S. states had listings in the 773 programs (not counting adult programs) they located. Counted among the states with substantial levels of activity were the most punitive states like Texas. While most of these were fringe programs, light years from the mainstreaming of restorative justice as the automatic option in New Zealand juvenile justice, there were major states like Massachusetts and California where a majority of counties across the state had restorative youth conferencing programs. While there is clearly less restorative justice going on in the United States than in other major states like the United Kingdom, Germany, France, China, and India, enough is happening for North Americans to view it as a significant criminal justice development on their continent. So even in North America, and even conceived narrowly as something about criminal law, Acorn is right that restorative justice is a topic that matters. Now let us see what we can learn from how Acorn became disenchanted with it.

## ACORN’S UTOPIA

Acorn begins her book by explaining why she was seduced by restorative justice, why once she was a fellow-traveler (“a one-time advocate” as she is characterized in the cover blurb). One of the impressive things about this book is that at many points Acorn puts the case for restorative justice with stunning eloquence. Those of us who are restorative justice sympathizers, with less honed writing skills than Acorn, will find the book a valuable resource for the way it puts the restorative justice case more elegantly than we do! Yet it is an extended essay on how she saw the error of her ways. Unlike critics from within of the sentimentalism of restorative justice advocates, who nevertheless think restorative justice is on balance a good thing (like Kathy Daly (2002)), Acorn believes restorative justice is a bad thing. Unlike Daly, and like me, Acorn sees utopias as useful. She quotes approvingly Allan Bloom:

These conservatives want young people to know that this tawdry old world cannot respond to their demands for perfection . . . But . . . idealism as it is commonly conceived should have primacy in an education, for man is a being who must take his orientation by his possible perfection . . . Utopianism is, as Plato taught us at the outset, the fire with which we must play because it is the only way we can find out what we are. We need to criticize false understandings of Utopia, but the easy way out provided by realism is deadly. (Acorn 2004, 160)

While Acorn finds use in visions of what perfection might mean, she sees the restorative vision as not even desirable. It leaves us with a sloppy sentimentality “informed by new-age thinking (‘I love and affirm everything in the universe’), self-help (‘what I hear you saying is . . .’), pop psychology’s mantra that ‘revealing is healing’” (Acorn 2004, 160). Acorn’s alternative utopia has it that

the bad guy getting painfully skewered can still potentially be a very good thing. Moreover in this utopia, prisons are not crime schools. Nor are they environments where prisoners are routinely subjected to brutal sexual and other assaults and humiliations. Prisons are meaningfully rehabilitative as well as seriously punitive. They inflict suffering on offenders as a matter of justice. (Acorn 2004, 161)

Moreover it is a utopia where victims are taken care of: “In this utopia, prosecutors have enough time to talk to victims at length, and there are people to help victims through the criminal justice system” (Acorn 2004, 161). At the end of a long critique of restorative justice utopias, though mostly of restorative justice realities, neither this alternative utopia nor the reality its pursuit might give rise to are judged in need of self-critique. Not discussed is even a concern as basic as what this utopia would do for the 90 percent of victims whose offender is not prosecuted. Offering a strategy of healing for victims whose offender is never convicted is fundamental to the pitch for victim rights advocates to convert to restorative justice. Like Acorn, I will eschew in this article’s critique of her alternative utopia and focus on what she finds distasteful about restorative justice.

## AUTHENTICITY

Partly, Acorn veers away from restorative justice because its advocacy implies a want of authenticity. Even as she bought into the seductive appeal of the tradition, in her daily life “nasty comeuppance for wrongdoers still felt just” (Acorn 2004, 6). True, our nature is to want comeuppance for those who wrong us. It is in our socialization to dress up that natural, perhaps even universal, emotion, as a craving for justice. It is also in our nature to



want a comfortable life and to desire material things that make us comfortable. When I wish I had that bigger, nicer house in a neighborhood with a beautiful view, I can reflect upon that want as "greed." But should the mere fact of my wanting it cause me to renounce my commitment to a more just distribution of wealth that means people like me could not afford such a mansion? Am I guilty of "hypocrisy" or inauthenticity to desire certain things only rich people can afford, as I advocate redistribution away from the rich? Am I inauthentic to crave pecan pie when I am committed to diet? Even when I binge three slices of pie, does that mean I was wrong to be committed to the diet? Gluttony is a natural human vice. We are vulnerable to it because it once helped humans survive by eating whenever food appeared.

Virtue, in the restorative justice philosophy some of us espouse, resides in regulating our natural desires to give people their comeuppance, just as virtue resides in regulating our natural lapses into gluttony. When we have this normative position, the response to our frailty in craving revenge or pecan pie is not to reflect on our hypocrisy (and flip to finding virtue in a fat and vengeful life). Rather it is to recognize that we are naturally frail human beings, to learn to joke about our frailties, and to muddle through, transcending them as best we can.

The hypocrisy critique connects to Acorn's wider concern that restorative justice anticipates that "it will be drawing its participants (including its offenders) from the ranks of the morally supererogatory" (Acorn 2004, 12). What is the use of a philosophy that depends on ordinary people being saints? It is especially implausible to rely on offenders being so moved by compassion for the revealed suffering of their victims that they will desist from future offending and volunteer to do everything they can to repair the harm to the victim. Offenders, Acorn frequently reminds us, are very often "bad" people. She is worried about restorative justice undermining our will to stay prudent about "the propensity of bad actors to keep on being bad" (Acorn 2004, 66). It is true that restorative justice resolves to treat offenders as good who most would regard as bad. This is about the proposition that all of us are both bad and good. We have multiple selves. The most greedy among us has a generous self, the most violent a gentle side. Restorative justice is about creating deliberative spaces that encourage us to put our best self forward. In a way Acorn does not contest the fact that this does happen surprisingly often in restorative meetings. What the restorative justice advocate reads as a person who has done a lot of bad things putting their best self forward in the encounter with the victim, Acorn reads as a performance, playing at phony contrition that conceals the offender's real and bad self.

Consider the worst case of this scenario: a serial murderer and rapist, who, like so many murderers we criminologists meet in prisons, is a rather pleasant, gentle person when not killing or raping. This compassionate

self comes to the fore in the restorative circle with the family of a person he murdered. A week later he rapes and kills another prisoner. There, says Acorn, is his real self, the one manifested when he gets the opportunity alone with another vulnerable victim. The restorative justice advocate says no, even in prison, life is full of opportunities to dominate other unprotected people. There have been only three occasions when this offender has seized such opportunities to kill and only three when he has raped. Our challenge is to do everything we can to bring his normally compassionate self to the fore all of the time. Certainly there are things we can do to improve surveillance, alarms, and appropriate forms of segregation in prisons, but we know that however well they function, it will remain true that people will suffer much greater risks of murder and rape in prison than they do on the street (Weed 2001). The compassionate commitments of the restorative justice advocate do not allow them the luxury of not caring as much about prisoner-victims because they are “bad” people. So the restorativist advances the hypothesis that even in the worst cases, or especially in the worst cases, the restorative circle is one of our more promising tools for coaxing the offender’s compassionate self to the fore and preventing future victimization.

Of course our serial murderer-rapist is a very extreme case. Even in the world’s most brutal societies, serial murderers and serial rapists are statistically rare in prison populations. People who are compassionate nearly all of the time are also rare. Many murderers have fewer propensities to compassion than our most uncaring acquaintances. But like those “compassionless” acquaintances, they do not in fact spend 90 percent of their lives doing nasty things to others. Even the most ruthless and cruel among us devotes a significant portion of our life to kindness.

Let us take an important recent case of the restorative-retributive choice here. For both Bush Presidents and for most citizens who voted for them, Saddam Hussein was a monster, a dictator whose evil was a cut above that of the rest of the world’s dictators. The only way to make the world safe from him was through the barrel of a gun. UN Secretary-General Kofi Annan adopted a more restorative diplomacy toward President Hussein. We now know that among the things he was saying to him in the 1990s was:

You’re a builder, you built modern Iraq. It was destroyed once. You’ve rebuilt it. Do you want to destroy it again? Look how you talk about the suffering of your people. It’s in your hands, we can do something about this. If we can work out an agreement that will prevent military action and you would undertake to comply, it will save the day. (Shawcross 2000, 241)

With hindsight, the restorative diplomacy (backed by the implied threat of force) seemed to work. UN inspections and sanctions worked; Iraq had ceased

to pose any kind of credible military threat to Kuwait, Israel, the United States, or even to the state the United States had wanted Iraq to threaten—Iran—where the United Nations and its peacekeepers had also effectively brokered a peace. President Bush and his American mass media organizations believed, and internationally promoted the belief, that President Hussein’s performances for the “dangerously naïve” Annan and his weapons’ inspector Hans Blix were a charade. Annan and Blix, for their part, believed in a trust and verify presumption that Saddam could be persuaded to walk his talk. They believed war would make the world less safe by risking new cycles of violence in the Middle East.

In a much more general way, the restorative justice theorist hypothesizes, with some limited empirical warrant, that laying on human beings master status traits such as “bad person,” “tyrant,” “American imperialist,” “rapist,” “junkie,” “terrorist,” has terrible consequences. As with the Presidents Bush in the case of the butcher of Baghdad, so with common criminals Acorn (2004, 19) sees all this as “culpably sentimental and dangerously naïve.” On the restorative view, stigmatization reduces the prospects of the person becoming a better person, a more democratic political leader, of decreasing domination, shaking off substance abuse, renouncing terrorist violence. Most bouts of twentieth-century terrorism ended with the integration of some terrorist leaders into legitimate politics after they renounced violence (Karstedt 2005)—whether it was Northern Ireland, Israeli, or South African terrorism, or the terrorism of the Italian Red Brigades, the Bader-Meinhof gang in Germany, Militias in East Timor, or the Bougainville Revolutionary Army in Papua-New Guinea. It simply does not help to label an Israeli Prime Minister a terrorist because he once committed terrorist acts. Even if there is some truth in the view that his renunciation of political violence is hypocritical, a performance for Western publics, we do better to eschew scoffing at his talk of nonviolence; we want him to walk the talk. Hence, the stupidity of Western leaders like Dick Cheney in opposing the release from prison of Nelson Mandela because he had been an advocate of armed struggle against an elected government—Mandela the terrorist who had blown things up.

We must shame criminal violence without stigmatizing its perpetrators by hanging labels permanently around their necks. This is the idea of the distinction between reintegrative shaming—disapproving bad acts by essentially good persons—and stigmatization (Braithwaite 1989). Reintegrative shaming is a strategy for taking crime seriously, for vindicating victims through a respectful process that also ritualizes ceremonies to decertify deviance, reintegrate, reconcile. The hypothesis is that stigmatization makes crime worse; reintegrative shaming controls it (Braithwaite 1989). Acorn seems to believe the opposite, that treating bad people as bad is not only authentic but effective.

Restorativists, in contrast, are portrayed as hypocritical and imprudent. Readers of Acorn’s text, who knew nothing of the views of actual restorative

justice advocates, would be forgiven for thinking that when the imprudent “good-hearted” presumptions about criminals prove “illusory and dangerous” (Acorn 2004, 22), restorativists are too squeamish to move on to a punitive response. She does not explain that almost everyone in the international leadership of the social movement for restorative justice believes that the prison must be preserved as an institution. It is just that many restorativists believe that nearly all contemporary prisoners would be better responded to in other ways, that the considerable number of societies that have imprisonment rates one-tenth those of the United States are the ones edging closer to justice. Acorn’s utopia implies that the overwhelming majority of serious offenders who are not prosecuted should be caught and locked up to take us in the opposite direction—doubling, then quadrupling the size of our prison systems as we catch more of the evildoers.

I have used the idea of a responsive enforcement pyramid to encapsulate the restorative alternative here. Figure 1 represents the idea that restorative justice, deterrence, and incapacitation are all limited and flawed theories of compliance. The theory of the pyramid is that we start out with the assumption that offenders are virtuous actors. When that assumption proves misplaced again and again, we treat them as reformable with deterrent threats. When that fails at different levels of deterrence, we resort to incapacitation—locking up the violent offender, withdrawing the license of a crooked accounting firm.

What the pyramid does is cover the weaknesses of one theory with the strengths of another. The ordering of strategies in the pyramid is not just about putting the less costly, less coercive, more respectful options lower down

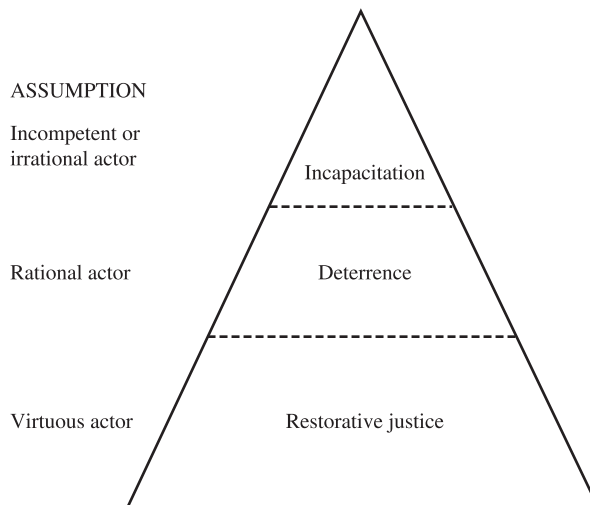


Figure 1. Toward an integration of restorative, deterrent, and incapacitative justice.

in order to save money and preserve freedom as nondomination (Braithwaite and Pettit 1990). It is also that by only resorting to more dominating, less compassionate forms of social control when more dialogic forms have been tried first, coercive control comes to be seen as more legitimate.

The pyramidal restorativist turns the accusation of naivety back on traditional criminal law jurisprudence. It is naïve to believe the state can afford to prosecute and punish all detected serious criminals in proportion to the seriousness of their crimes. What it inevitably does is punish the easy cases, granting impunity to those types of serious cases where proof is more difficult—white-collar crime, rape, child abuse. In practice this means prisons overpopulated with vulnerable racial and ethnic minorities, and impunity for crimes of the powerful.

There is no doubt, nevertheless, that justice-as-respect is “fakable” (Acorn 2004, 54), and that one does not need to be as sophisticated as Saddam Hussein to fake it. The protection that restorative and responsive justice offers against criminal offenders who fake it is the deliberative engagement of stakeholders with the sincerity of remorse (including family and friends of the offender and cynical state criminal justice professionals who have seen the game played many times before), trust that is verified by monitoring of the acts of material and symbolic reparation agreed, and real capability to escalate up an enforcement pyramid until the demands of justice are honored. Hence, it is not the case that “Restorative justice provides no protection against the offender who has us pegged as suckers for performances of contrition and remorse” (Acorn 2004, 76).

## “COMPULSORY COMPASSION”

Alliteration with the first four letters in common, while catchy, misleads, as Acorn (2004, 137) herself ultimately concedes. Restorative justice is about creating spaces where it is more possible for compassion to flourish than in traditional criminal justice institutions like courts, prisons, and prosecutors’ offices. It compels neither victims, nor offenders or other participants to show compassion. While the evidence is that compassion is more manifest in restorative justice conferences than in courtrooms (Strang 2002), this is not because conferences make compulsory something that courts do not. A now quite standard way of evaluating restorative justice programs is to ask victims if they felt pressured to participate or to go along with an outcome they did not want (e.g., Trimboli 2000; Strang 2002; Braithwaite 2002). Acorn writes as if the opposite were the case, that compelling compassion (from victims in particular) is a positive performance indicator for restorative justice.

Acorn worries that compassionate “right-relation” is bad for victims. Right-relation is a term used by a small minority of restorative justice thinkers,

yet Acorn attributes to it the status of being “the single unique feature of restorative justice” (Acorn 2004, 20). While I am not sure what right-relation means, Acorn gives plenty of examples of imputed right-relation and its dangers. So we are told of a cab driver who permanently must use a wheelchair as a result of a brutal assault by two young men. They offer, in a letter, to help him for twenty-five years as compensation for the harm they had done (Acorn 2004, 12–13). The victim accepts, but the judge rejects it on grounds that the offense was of such seriousness as to require significant prison terms, and the offenders could not care for the chair-bound victim from prison. Herman Bianchi, the source of the story, deplores the scuttling of the restorative justice outcome by the judge. Acorn is on the judge’s side:

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. (Acorn 2004, 14)

In good conscience, Acorn argues that we must reject a system that encourages the subjection of victims to such intense intimacy with those who harmed them. Yet no system encouraged this unusual offer. There was nothing systemic about it. It is the only remedy, exactly like that, I have heard of.<sup>4</sup> It was a form of repair proposed by two specific offenders. What a restorative justice system does is create a space where stakeholders can proffer and choose all manner of remedies tailored to the uniqueness of cases. What Acorn and the judge are saying is that the victim should be prevented from making this unusual choice. Now *that* really is a systemic intervention and one that involves compulsion and paternalism toward the victim.

In this particular case, Acorn stereotypes the offenders as having poor life skills, as incapable of learning how to care well for the comfort of a physically disabled person. She also characterizes the participants as caught up in the idea like “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.” When some families adopt an abandoned puppy, they have a mature conversation about just those risks of finding it too much to handle. Restorative justice seeks to systematize that kind of prudential conversation. Both victims and offenders are urged to bring family and friends into the circle of conversation as to which remedies would work for them

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4. Though in dangerous driving cases, it has been common for offenders to volunteer community work for foundations that assist victims paralyzed by traumatic brain injury. They are simply rostered on to home help for such disabled people who request such assistance from volunteers.

and which would not. If there is no one else in the circle to play that role, it is the facilitator’s job to ask searching questions about whether proposed remedies would be sustainable, practically and emotionally. Such conversations often, especially in the more intricate and intimate interventions that are common in care and protection of children cases, result in conditions being imposed on the proposed agreements, exit clauses, scheduled review conferences to check if it is working, agreement on alternatives that will swing into play if it does not work. Acorn has not considered this empirical experience. She simply will not place confidence in the stakeholders to deliberate about the crafting of such self-protective options.

Acorn says, “No punitive system would presume to promise ‘healing’ to victims. Yet restorative justice entices victims with precisely such hopes. Concern for consumer protection seems to have been overlooked. There is no money-back guarantee if the healing doesn’t happen” (Acorn 2004, 67–8). Putting aside the hyperbole of “promising” healing, conventional criminal justice no less “promises” things like just punishment, deterrence, and protection of the community. If promises are what these are, there is no money-back guarantee on their delivery to victims. Again, what seem like purely normative questions are for the restorativist empirical ones about who really keeps their “promises” more often. So an important element of the theory of restorative justice’s appeal to the victims rights movement is that impunity happens less often with a sound restorative strategy than with a rigorous just deserts policy (Braithwaite 2002).

The restorative justice ideal is to remedy the imbalance in the way conventional criminal justice continues to focus on needs of the offender for rehabilitation at many stages—court, prison, parole—while the victims are lucky to have their needs attended to even at the sentencing stage. The way to accomplish this is to institutionalize rights of victims to the resourcing of restorative justice conferences at each of these stages. If they want a conference because there is a young member of their family who is afraid because their offender is coming out of prison, and if the offender agrees to participate, the state should fund it. A whole criminal justice system legislative framework for restorative justice, as was enacted in the Australian Capital Territory in 2004, is the way to show equal concern for the justice claims of victims, as for offenders, in this regard. This means schools and families can divert playground assaults to restorative justice rather than sending them to the police, then, in turn, police, prosecutors, judges, prisons, parole can all respond to submissions to send the case for a restorative justice conference.

On one account, restorative justice should mean that we never give up on accomplishing active responsibility and assuring accountability for that accomplishment (Braithwaite 2006). When the promise of active responsibility (taking responsibility as opposed to being held responsible) falls over at one stage of the justice process, try and try again until that promise is realized. At one crudely empirical level, restorative justice keeps its promises

better than conventional criminal justice. In Latimer, Dowden, and Muise's (2001) meta-analysis of thirty-two evaluations with control groups for the Canadian Department of Justice, completion of restorative justice agreements (though often voluntary) was 33 percent higher than completion of agreements and court orders in the control group (though more often legally required).

Acorn constantly applies words like "evangelical sensibilities" (Acorn 2004, 24) and "zeal" (Acorn 2004, 19) to "dewy-eyed" (Acorn 2004, 206) restorative aspirations for justice-as-repair, terms she does not apply to aspirations for justice as hard treatment. But restorativists are rarely so zealous as to advocate compulsory repair, as opposed to undominated agreement to repair, as the ideal. While there are elements of compulsion in restorative conferences (offenders, not victims, are often compelled to attend), it is retributivist jurisprudence that is more zealous about punishment as something consistently compulsory.

That said, there is a nagging concern all restorativists must have about Acorn's critique here. While compulsory compassion is not the problem, while it is unusual for restorative justice programs to ask, let alone compel, victims to forgive, there is no doubt that the rhetoric of restorative justice can create a belief in the minds of victims that they will be regarded as hard-hearted if they do not forgive. Forgiveness is a gift (Minow 1998). Like apology, it has little meaning or emotional power to change lives if compelled. This is why it is a good evaluation strategy for restorative justice programs to ask participants if they felt pressured to manifest some sort of right-relation, for example to ask if apologies that were proffered were regarded as sincere, especially by those who received them.

## LOVE

Acorn construes restorative justice as about reconciling love and justice. Much of her text is an assault upon this notion. It is an engaging read, but wide of the mark: as with "right-relation," for most restorative justice scholars and practitioners, love is not a central concept in their (professional) thinking. Yet unlike the situation with right-relation, I am one of the restorative justice scholars who does talk about love in restorative justice processes. While in the minority of restorative justice folk in this regard, it is also true that some of the more influential restorative justice leaders such as Howard Zehr (1990), Dan Van Ness and Karen Strong (1997) and Kay Pranis (2001) see love as an ingredient that makes restorative justice succeed when present.

Acorn critiques a much bigger claim about love than the likes of Zehr, Van Ness, Pranis, and I make. It is one thing to claim, as I do on the basis of some systematic empirical evidence (Harris 2001, 144–5), that the experience of love from family members in restorative justice conferences can trigger the experience of remorse, and thereby remorse-apology-forgiveness



sequences. It is another to suggest that cultivating an inner state of love is “a requisite for justice” (Acorn 2004, 24). I do not necessarily reject the notion that love increases one’s commitment to secure justice for the actor with whom one empathizes. Love may increase our sensibility to be able to see all the mitigating and exculpatory factors in a complex social encounter. Nor do I necessarily reject Carter Heyward’s (1995) notion that lesbian sex enables women to experience a connectedness conducive to empathically comprehending the injustice others suffer. I found the discussion of the ideas of Robert Solomon, Martha Nussbaum, Robin West and Carter Heyward (Acorn 2004, 80–116) on these fronts engaging. Ultimately they seem to me empirical claims about which we should be careful without more evidence than the eloquent reactions of great writers to novels that induce stirrings of love and justice.

Equally, I do not reject Acorn’s counterclaim that the greater impact of love is to lead us to be lax about enforcing the demands of justice. Nor do I wish to adjudicate whether sentimentality for “whitewashed” people provokes flight from, or empathic identification with, the suffering of real, flawed people. Both the counterposed emotional dynamics seem like they might be plausible in some contexts. This whole discussion simply misses the mark because the folk on the other side of the room in restorative justice conferences do not generally appear to us, and are not generally presented to us, as endearing or whitewashed. They are people who ripped us off, exploited us, or they are people who are laying complaints against us. This is the antithesis of Acorn’s (2004, 81) account of the disposition of sentimentality some of us take to art:

We can watch a sentimental film and have pure, intense, memorable experiences of love, joy, anger, fear, longing, or sadness. The scenes are so moving because they are airbrushed from life . . . The sentimental produces pure emotion without the complicating qualifications of real life.

This when there is little real life in Acorn’s text: Acorn does not illustrate her points from careful recording of actual restorative justice processes. I say this not to denigrate Acorn’s literary genre, which is executed with evocative effect. It is a genre we can savor and be nourished by. But the strengths of Acorn’s genre are not a warrant for a critique of failing to consider real people when it is applied to as earthy and empirical a tradition as restorative justice. What the strengths of Acorn’s genre do for us is supply fresh angles for framing and coloring real people. The middle part of Acorn’s book is replete with these strengths without delivering the promise of the subtitle (a promise the early chapters and conclusion do deliver)—“A Critique of Restorative Justice.” For all that limited relevance to its project, the literary virtuosity of the heart of the book is a treat. So is the core critique it shares with Kathy Daly (2002) that restorativists like me are sentimental at times in the way we approach

“a misery-to-miracle story with a facile account of the transition from A to B” (Acorn 2004, 91).

### THE IMPREGNABLE UNIFIED SELF

Yet the excessively unified conception of good and bad selves in Acorn’s text is facile in its own way. Acorn recounts an actual case described by Charles Pollard:

David robbed Ahmed at knife point, demanding all his money. Ahmed handed over the cash immediately. In the subsequent restorative encounter, Ahmed explained “the fear and humiliation he had felt with a knife at his throat.” It is hard to believe that this exchange between two young men would be one of simple explanation of serious suffering and consequent compassion and remorse. David is a young man tough enough to commit an armed robbery. David also appears from the story to enjoy race privilege over Ahmed. It is hard to believe that Ahmed’s confession of fear and humiliation would not inspire in David at least some hint of self-satisfaction and an enjoyable feeling of power over Ahmed. (Acorn 2004, 148)

Because of David’s criminal history and his apparent racism, Acorn asks us to believe that satisfaction is more likely from him than compassion for the victim. While this is conjecture, it seems plausible that manifestations of fear and humiliation by Ahmed in an encounter with David on the street might please David, make him feel dominant. But is this as plausible in an encounter where both David’s and Ahmed’s mothers are also present, listening to the tale of Ahmed’s fear and trembling at the point of David’s knife? Acorn does not cite evidence that criminal offenders are more likely to find restorative justice conferences gratifying than grueling. The evidence is actually the other way (Braithwaite 2002). The restorative justice insight is that we manage multiple identities by audience segregation. We manage an identity of being “bad” so long as it is not on display to others with whom we have worked hard for years in managing an identity of being “good” or at least of “not really that bad.”

The restorative justice strategy for the repair of a flawed self is to bring those audiences together in a conversation in which the “good” self is interpreted as the core self. The David that dominates at the point of a knife is a deviation from the core self that is redeemable. Restorative justice creates a space and a kind of conversation that maximizes prospects for the crafting of “redemption scripts” (Maruna 2001): that was the me that had not yet recovered from being abused, from substance abuse, but now I am recovering from my abuse and I would never abuse others at the point of a knife now. With a sophisticated qualitative-quantitative method, Maruna shows that

serious criminal offenders who adopt redemption scripts are more likely to abandon criminal careers. This empirical insight helps underwrite the “earned redemption” approach to restorative justice (Bazemore and Schiff 2005). The self of the “bad” person is not impregnable because it is not unified within the individual, and its manifestations are in tension across space, time, and social context.

## CONCLUSION

The biggest worry about Acorn’s text is that it takes such a narrow criminal lawyer’s view of justice. Much as television has prepared many of us to equate justice with criminal justice, as opposed to social or economic or noncriminal forms of legal justice, Acorn seems to misunderstand common sensibilities when she says: “In common parlance, when we ask ‘Was justice done?’ what we generally mean is ‘Was sufficient proportionate authoritative punishment meted out by the state?’” (Acorn 2004, 47). Normatively, the big difference between Acorn and restorativists is that her vision of justice is more segmented, while the restorative vision of justice is more immanently holistic—with restorative, penal, reparative, procedural and social justice tending to be positively correlated (Braithwaite 2003). Descriptively, it is the restorativist who has the more segmented view of human actors as multiple selves, while Acorn’s is more holistic, criminals being often seen as having a unified (bad) self.

A second big worry is with Acorn’s cavalier failure to engage with the empirical evidence—which in many cases is considerable—on the claims she makes. It seems highly plausible to assert that anyone who was “savvy” would not expect a one-hour restorative justice meeting and some follow-up undertakings to have a lasting effect (Acorn 2004, 67). That was certainly my “savvy” expectation when I said to Lawrence Sherman and Heather Strang that they would need the statistical power in their experiments to detect less than 10 percent reductions in offending, because it would be unrealistic to expect more from one hour that swims against the tide of so many hours of other influences in a life. It was a “savvy” expectation that seems borne out by a statistically significant reduction of reoffending of only 7 percent in a Canadian Department of Justice meta-analysis of thirty-two evaluations of restorative justice compared to a control group (Latimer, Dowden, and Muise 2001) and an updated meta-analysis where studies published after 1995 had an effect on reoffending of 12 percent (4 percent for those before 1996) (Bonta et al. 2006).

Actually the overall numbers conceal an emerging understanding from this literature that, sometimes, restorative justice can have large effects in reducing violent crime by as much as 40 percent (Sherman 2003) and in other contexts (for example, Aboriginal property offenders in the Canberra

RISE experiments and some kinds of victims who did not get what they were looking for), restorative justice can be seriously counterproductive. So the data are beginning to suggest that our savvy expectation is wrong and we have a long way to go before we understand why. Acorn does not seem interested in this long empirical journey. However zealous and overreaching the ambition of the social movement for restorative justice to reform institutions as disparate as schools, families, prisons, legal systems and UN peace operations, it has also been a distinctive movement in its commitment to being evidence-based concerning the outcomes of its advocacy.

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