

Rights & Restoration

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Preface

The human rights *movement* is an older and stronger global movement than the social movement for restorative justice, and so are the peace movement, the women's movement, indigenous rights movements, the children's rights movement, the animal rights movement, and the environmental movement. Creatively conceived, these are all related social movements against domination and arbitrary power, and advocates of humbling power. The arbitrary powers that must be humbled include overreaching state power, corporate power, institutions that are hegemonically male, prisons, and militaries. These diverse movements differentially focus on these sources of power. The kind of domination that the environmental movement scrutinizes is domination of nature especially by corporate power; the animal rights movement focus is on domination of animals; the human rights movement on domination of human beings; the women's rights movement on women; children's rights on children; the peace movement on victims and fighters in war; and the restorative justice movement on victims and perpetrators of crime (and other injustices). The political links among these agendas are intimately connected. Those who fight wars are often perpetrators of crime, injustice, theft or violence not much different from the violence and injustice inflicted by those who commit common crimes. Their victims, like victims of crime, often suffer emotional and property loss, and also bodily affliction.

Restorative justice, indeed, is centrally relevant to peace building, as several chapters in this collection will argue. It can and should be centrally relevant to restoring women's rights as Christa Pelikan, Theo Gavrielides, and Vaso Artinopoulou's chapters particularly argue. It can and should be relevant to indigenous rights as Pat Lauderdale and Annamarie Oliverio's contribution contends. Indeed, this whole book is about the idea that the restorative justice and human rights movements are kindred struggles. The collection probes this idea in many revealing ways. Colin Harvey's chapter shows that rights struggles are best enlivened by relational and

dialogic engagement about the enforcement of rights, John Winterdyk and Nicholas Jones focus on restorative and responsive regulation for rights. While all these movements share in common the fact that they arm us against arbitrary abuse of power, it is best to see them as having both shared and separate agendas. Social movement activists must have a focus, a constituency and should build expertise on just institutions. Lode Walgrave discusses the particular dangers of diffusion of focus regarding restorative justice in his chapter.

For all these social movements to flourish in mutually supportive ways, it is not required that those who are concerned with diverse forms of domination are politically engaged with all the movements. It is only necessary for us to engage with some of those movements. It is quite possible to do this while meeting the obligations to our family, our job, and our community, and living a life full of camaraderie, fun, reflection, love and music. Lauderdale and Olivario's chapter shows that fellowship and music are part of being whole, something we can learn from the connectedness of indigenous peoples. Music is actually part of holistic restorative living that heals hurts. It can be argued that musical instruments are more important than guns for UN peacekeepers to carry musical into war torn nations. We can live restorative lives of deep satisfaction and joy by throwing ourselves into many different struggles against domination, while eschewing guilt over struggles we have left to others. We can be an audience for their music about their struggles, even when we do not play their instruments.

Separateness of cognate, anti-domination movements is also important because it allows each movement be a check on abuse of power by other movements. Hence, if western restorative justice movements set accreditation standards for restorative justice that imply that traditional elders ought to be accredited by westerners before they engage in restorative practices their forebears have practiced for centuries, indigenous rights movements are needed to critique restorative justice (an issue sensitively discussed in Gerry Johnstone's chapter). If restorative practitioners exclude women, critique from a separate movement dedicated to the empowerment of women is vital. If they fail to give voice to children (Gal, 2011) or treat them as chattels, critical advocacy against restorative justice by a vibrant children's right movement is imperative. Most pointedly, for this volume, restorative justice should be a movement that checks tendencies for human rights law to become technocratic, "an accountancy of rules" that tames justice (Douzinas, 2000, p. 374).

Too often arguments in human rights law give the appearance of abandoning the very thing that is supposed to underpin the subject: a recognition and acceptance of the dignity of each person within a shared interpretative

community (Colin Harvey, this volume; see also Mark Walters' chapter on dignity as a restorative justice value).

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There is currently a real risk of the practice of rights being aggressively colonized by lawyers' intent on policing the boundaries of human emancipation through stultifying forms of legalism. The ominous shadow of the lawyer may discourage open communication... Participants can feel ill at ease in the company of those who wield legal expertise, and who often do not wear their legal learning lightly. This reverence for legal form and formalism can be counterproductive and ultimately corrosive of an imaginative and experimental democratic practice of rights (Harvey, this volume).

Restorative justice is not an enemy of the rule of law; it is an ally, yet a critical one. Several chapters in this volume show the positive role restorative dialogue can play in advancing legal literacy among the people (see the Richard Grimes' chapter). Restorative justice's critique of excessive legal formalism can save the noble purposes of democratic law from itself. Restorative justice is a distinctive reminder to lawyers that law is a democratic practice that should serve the people rather than place itself professionally above them. Conversely, of course, the law is a worthy critic of restorative justice, particularly when it comes to honouring the constraining values that must be central to restorative practice. These include the constraint never to breach the upper limits on punishment laid down by the law for particular offences, the constraint against humiliating or degrading forms of censure (such as asking a child to wear a shirt that says "I am a thief") and constraints to honour children's rights more broadly. Responsiveness is another important theme that I suspect is required by both restorative and republican values, so I was delighted to read the chapter by John Winterdyk and Nick Jones on that theme and what is required regarding appropriate constraints. Restorative justice takes a different approach to checking the law's abuses versus the approach the law advances to checking restorative justice's abuses. Empathy is a key to the restorative justice method for checking abuse of power. Empathic communication can check power by sensitizing it, and by improving its ability to learn from its mistakes. Empathy has methodological centrality for restorative practice whether this is accomplished by inter-ethnic communication in Cyprus or by sensitizing those who utter hate speech in Britain to the insight that what a speaker thinks funny can be deeply hurtful.

This is an important and timely collection on a topic that has been neglected by both the human rights and restorative justice movements. It traverses a diversity

of specific and crucial issues such as deinstitutionalizing the stigma of criminal conviction in Rod Earle and Alison Wakefield's contribution. Perhaps the single most impressive feature that distinguishes this collection from others on restorative justice is that it moves the usual focus on North America, Western Europe and the Antipodes to Central and Southern Europe through the contributions of Theo Gavrielides, Vaso Antinopoulou, Tunde Andrea Barabas, and Maria Hadjipavlou. Many of these Central European and Mediterranean lessons are profound and can greatly enrich the predominantly North Atlantic restorative debate. As a scholar who thinks normatively about restorative justice in civic republican terms that value freedom as non-domination, this is satisfying because the journey of republican freedom started in southern Europe before it much later moved west and north. May the critical restorative energy and the rights focus of the community of republican scholars survive for another two millennia.

Foreword

Living in a Relational and Moral Universe

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We live in a relational universe (Llewellyn, 2009; Llewellyn & Howse, 1998). We do not exist alone. Our actions affect others; although we are individuals, we are individuals who live in networks of affiliations with others. Some are more important to us, others less. Some are highly influential in certain aspects of our lives and personalities; others are equally influential in alternate parts. We are neither fully independent nor dependent; we are interdependent. Our relationships are the core to who we are.

Some relationships are life giving; others cause harm. The effects of our relationships depend largely on the nature of the interaction we have with others; and they are also characterized by respect for dignity, and concern for both their and our welfare. Or they can be disrespectful and unconcerned, or antagonistic. The way we behave with others and how they interact with us, determines whether the relationship is life giving or harmful.

This is not a new idea. Our creeds have told us this. The Golden Rule instructs us to treat others the way we want them to treat us. Called the rule of reciprocity, it appears in ancient texts and in most religions. Sometimes it is expressed in the negative: Do not treat others in ways that you would not like others to treat you. Either way, it reminds us that we are interconnected with others and the nature of the connection counts (Grogan, 1995).

Our universe is not only relational, it is also moral. The values that lead to life giving relationships can be articulated as norms that offer guidance for behaviour that establishes boundaries that identify impermissible behaviour. Communities agree on these norms, many of them, like the Golden Rule, are so similar from place to place that we might consider them universal. Others are particular to their locales. These norms reassure us that the people and institutions in our communities will protect us if we are threatened by those who do not follow the norms, and