

RESTORATIVE JUSTICE: A SECOND CHANCE

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So now for some immaterial but hopefully still useful Leiden contribution: "Nichts ist praktischer als eine gute Theorie."

Beccaria' consolation for academics: if my book saves just one soul from criminal irrationality it served its purpose - The power of ideas one hopes ...

Key concepts: victims' *wrongful harm*
(re)defined, what may be done about it by
offenders and others in terms of *justice*
(to be simplified), *human rights* and
personal realities

Culminating (of course) in: one more
compelling argument for RJ's top priority!

1. Undoing harm is restoring victims to their rightful original position in principle "as if nothing wrongful happened", in recreating unharmed personal realities
2. Taking (human) rights seriously => taking restorative justice (much more) seriously
3. "Second chance" for victims/offenders

Harm = valuable "difference" between two lives: actual victim's personal reality v. hypothetical life w/o criminal intervention
=> *turning back the clock:*

Undoing harm is recreation of original positions and future lives in principle "as if nothing wrongful happened"

Full redress of wrongful harm is nothing else than reinstatement of full enjoyment of relevant human rights in a wide sense, in human realities

(e.g.: bicycle theft, return, compensation ...)

Personal realities after fully undoing harm may be rather different from (hypothetical) undisturbed life

Still viable as long as victim's new life is equivalent to undisturbed life (in terms of fundamental values, human flourishing etc.)

From full restitution to monetary & other compensation (services etc.)

Possible in principle as a consequence of "man's capability to transcend time", not just in the sense of positive oblivion after full redress

"Man is more than past, present and future": the great mystery of our ability to transcend time and "undo" the past

Wittgenstein:

"If by eternity is understood not endless temporal duration but timelessness, then he lives eternally who lives in the present."

(free from worries about past & future ...)

Core issue indeed: without such full restoration "transcending time" there is no respect for human rights:

Offenses harming victims are direct / indirect human rights (to life, liberty, pursuit of happiness etc.) violations as well!

Restoration "as if nothing happened" is on a par with any enforcement of (human) rights ... is prevention of wrongful harm in itself

=> RJ not just one more human right but essential for human rights *per se*: no human rights without RJ

=> at least two equivalences or
"symmetries" in principle:

Undisturbed life = "righted" victim's life

Prevention & enforcement = redress

New meaning of Kant's famous dictum:

Nothing fills more with indignation than injustice does; all other evils borne by us are nothing compared to it.

Why? Because injustice in the sense of:
not redressing wrongful harm is
continuation of wrongdoing and its
consequences

(Wrongdoing worse than just pain and
suffering: more or less wilful conduct v.
inexorable fate)

Who is to effect redress? Offenders themselves in principle:

"second chance to do the right thing" in (re)creating victims' lives as if nothing wrongful was done after all

This is the fundamental logic of offenders' liability and of retributive or better restorative justice

(Deeply related to social respect and self-respect created both by sticking to common rules forestalling wrongful harm and by "a second chance" for offenders to respect their former victims after all)

Doing the right thing after all:
(incomparably) much harder than doing
the right thing from the start, both for
offenders and for victims

Still there is no other way for offenders
to be free from debt in principle, just as
victims may want redress by offenders in
the first place

Oftentimes this ideal of total undoing / redress is no more than a noble dream of course: killing, physical / mental maiming & much more not to be undone as such

=>

Change of perspective from past to be restored (impossible) to humanly feasible future lives

Also offenders may be unable to "totally turn back the clock" even in cases of minor wrongful harm

=> public solidarity with crime victims not just to be directed against offenders, but to lead to real solidarity with crime victims

Third parties to play various roles, from RJ volunteers to public administration - in much more than material redress, including all tried & tested RJ practices

Public administration liability for crime victims' redress also \Leftarrow risk liability for not having prevented crime

So RJ is really important indeed!
Fundamental for any civilized rule of law:

Human rights top priorities in law +
public policy, trumping other interests
and rights?

Then RJ top priority as well!
Restoring enjoyment of human rights and
personal realities

Importance of RJ practices subject to proportionality and subsidiarity *vis-à-vis* other public policies of course

But remember Kant: justice first
("Niemand darf etwas empört mehr als Ungerechtigkeit ...")

Patchwork-like practice rather removed from this, including inconsistency of lip service to human rights and doing little if anything concerning their enforcement afterwards

Much more integration needed: from punishment as (ultimately senseless) infliction of pain to retribution as restitution by offenders to victims (penal servitude), integration of criminal and civil liability, much better "total care" or still better re-empowerment for crime victims etc. etc.

Judith Shklar, *The faces of injustice* on the supposed mistake of "Undoing injustice and doing justice are inseparable". No: totally identical in the end

But still: to be made "concrete", on the basis of this "second chance" principle

And remember: "forbearing is better than healing" as they say in Dutch

Just like: "A better world begins with yourself": turning back the clock as positive annihilation of wrongful harm and debt may be important in our personal lives as well ...