



Book Review:

Mannozi, G. and Lodigiani, G. A., 2015.
Giustizia riparativa. Ricostruire legami, ricostruire persone.
Bologna: Il Mulino Saggi

Arianna Jacqmin¹

Abstract:

The concept of restorative justice is a fashionable topic nowadays: here and there national and international legislators, as well as political and religious actors, recall it, more as guideline rather than as a systematic way of understanding and applying justice. Its main scope is that of transitional justice, to replace or accompany criminal procedures: the media boom of the South African Truth and Reconciliation Commission has fostered its spread. Yet, is it possible to improve such justice also in everyday criminal cases? And what for? The authors of the book want to show us the concreteness and the practicability of this justice also within the Italian criminal context, which, until now, has weakly developed some restorative procedures, mostly with regard to minors. According to them, much remains to be done. The book proposes a few interesting procedural changes, but it also deals with the philosophical meaning of restorative justice, its criminological interpretation, and its first faint attempts within the Italian judicial practice.

Key Words:

Restorative justice, Justice, Criminal procedure, Italy.

1. INTRODUCTION

“Restorative Justice. Rebuilding Relationships, Rebuilding People”. In a few words, the title of the essays collection enlightens the soul of restorative justice: the reconstruction of the relationship between two individuals after its breach. A concept of justice that is based on the commitment of those involved in the dispute, and that aims at their restoration, by adopting a future perspective. Until here, nothing new. The concept of restorative justice is a fashionable topic nowadays: here and there national and international legislators, as well as political and religious actors, recall it, more as guideline rather than as a systematic way of understanding and applying justice. Its main scope is that of transitional justice, to replace or accompany criminal procedures: the media boom of the South African Truth and Reconciliation Commission has fostered its spread. Yet, is it possible to improve such justice also in everyday criminal cases? And what for? The authors of the book want to show us the concreteness and the practicability of this justice also within the Italian crimi-

¹Oñati International Institute for the Sociology of Law (IISL).

nal context, which, until now, has weakly developed some restorative procedures, mostly with regard to minors. According to them, much remains to be done. The American experience of victim-offender mediation, adopted also in capital cases, testifies the fruitful application of restorative justice during and after the trial to accompany the criminal towards the awareness of his deeds, and to support the victim in dealing with his trauma (Rossi 2008). Nevertheless, restorative tools do not substitute the mechanisms of criminal justice: rather, they integrate them. The book proposes a few interesting procedural changes, but it also deals with the philosophical meaning of restorative justice, its criminological interpretation, and its first faint attempts within the Italian judicial practice.

Before having a look at the four sections, I will introduce the editors and the authors. Grazia Mannozi and Giovanni Angelo Lodigiani are professors of criminal law, restorative justice and criminal mediation at the Università degli Studi dell'Insubria. The recent entry of such subjects in the career of legal studies is symptomatic of a changing conception of justice also within public institutions. Mannozi published several books over the topic of mediation and its relationship with criminal law, while Lodigiani distinguished himself as theologian. Most of the authors in the book are professors in criminal law field (Palazzo, Ruggieri, Eusebi, Mazzucato, Donini), in criminology (Ceretti), and in philosophy of law (Curi, Lombardi Vallauri), while some are judges (Colombo, Lo Gatto, Davigo), lawyers (Brunelli), psychoanalysts (Balestrieri, Bracalenti), or workers in the sector (Villani). This mixed composition provides a multidisciplinary and complex perspective over restorative justice, whose picture is enriched by an accompanying video produced by the editors of the book.

2. THE PHILOSOPHICAL PERSPECTIVE OF RESTORATIVE JUSTICE

The first section opens with a clear comparison between two different images of justice. Umberto Curi guides the reader toward the rejection of the traditional model and the discovery of the restorative one. The classical image is that of a blindfolded woman with a scale in her left hand and a sword in her right. She is a female justice, not terrifying, but impartial (the blindfold) and proportional (the scale); and she prevails over individual disobedience through the *vis publica* (the sword). This image represents a well-established idea of justice, whose origin developed in the philosophical thought of ancient Greece and in the Jewish-Catholic ethos. Both cultures perceive justice as the provision of an equal and opposite reaction to a deed: the punishment is the logical and unavoidable consequence of the crime. This consequential link is based over retributive and re-educative purposes. The first states that the criminal deserves a punishment that is proportionate to the offence; but the author strongly claims that its mythological and religious origins undermine any rational basis. Yet, by focusing on its religious roots, Curi forgets those rational arguments that the philosophy of punishment has always supported, especially in the Enlightenment. The penalty, according to the Kantian thinking, is a due suffering imposed to a certain person by the State in order to neutralize the individual and to compensate the harm he has caused to another man and to the whole society by his behaviour: punishment, if proportionate to the injury committed, is just *per se*, since it gives the dignity back to the criminal, regardless of a further scope of the penalty. On the contrary, restorative justice scholars claim that "there is no positive value for justice in the very fact of the perpetrator's suffering or sacrifice of wellbeing" (Llewellyn & Howse 1999: 376). In criminal theories, penalty represents an obstacle to unbridled revenge, which developed into the *lex talionis*: both reactions to a deed, as the author underlines, are

based on the idea of mathematical proportion, but, according to the traditional conception, only punishment embodies the idea of public justice, based on the rule of law. Furthermore, the preventative theories confirm the necessity of inflicting a penalty to a criminal to direct not only his future behaviour, but also that of all citizens.

The re-educative purpose assumes that the criminal is a deviant, since, by breaching the law, he denies shared values. This consideration implies that common respectable values exist and that the legal system is the legitimate subject to elaborate and to impose them (Palazzo). According to the author, such a metaphysically developed idea of punishment, which provides the criminal with the “good” values and asks him to believe in them, cannot satisfy any claim of rationality. Nor it fits with the democratic principle of moral freedom. However, criminal justice scholars (Hirsch *et al.* 2003; Duff 2003) claim that restorative justice cannot get rid of the same critics. By identifying a behaviour as “criminal” and by requesting the offender to acknowledge his deed – and at best to beg the victim’s pardon – it entails the pretention that the behaviour did not simply consist in the violation of a norm, but it was an offence to the victim. Thus, the criminal, rather than being responsible for the breach of a law, he is accountable for a relational breach: the judgement over his behaviour shifts from the strictly legal field to that of morality. Restorative justice ends up imposing values as well, while requiring the consent of the criminal over their rightness. Yet, none conception of justice could claim to be free from a moral imposition.

The authors think about a new construction of justice: a way to equalize an unbalanced relationship between the criminal and the victim, to make it just, once again (Eusebi). There is no need to resort to a mathematical method, since, in most of the cases, the weights to balance, the wrong and its punishment, are simply not commensurable elements. That is why the new image of justice is deprived from the scale. However, opposing scholars claim that the criminal relationship between wrongdoing and punishment can be easily compared to the retributive one between wrongdoing and apology: both reactions to the criminal behaviour are “retributive”, as long as they provide a feedback to a past misdeed (Hirsch *et al.* 2003).

As Grazia Mannozi enlightened in her previous publications (2003), restorative justice is “the justice without sword”, since it looks for an alternative to violence (the punishment) which, by the way, is precisely what justice demands to fight. In this regard, Gherando Colombo, well-known judge and author of the third chapter, sustains that there is a methodological error within the relation between criminal values and their application. The Italian Constitution recognizes as founding principles human dignity, inviolable personal freedom, and equality, which, nevertheless, are denied by the criminal response to the deed. The punitive system punishes the evil, namely the criminal, with further evil: the sanction, his alienation from society, and his forced re-education. But, how can a person learn to behave in a good manner if the instrument of such an education is reclusion and denial of his dignity? Punitive justice seems to have a system failure. However, such a statement rests on the presumption that punitive justice aims at restoring the dignity of the offender, when, on the contrary, its main scope can be rather identified in control and preventative functions.

According to the authors, justice should not only get rid of the scale and the sword, but also of the blindfold: every criminal case is different from the others, and requires a highly individualised solution. If, on one side, law establishes general and equally applicable principles, on the other, justice cannot “close the eyes” and ignore the specificity and the concreteness of the situations to be judged. Only then, justice can serve the interests of

the involved parties and of the whole society, without imposing itself as a universal incontestable system. Justice is a flexible mechanism that can take different shapes to restore broken relationships. Yet, this interpretation moves away from the traditional one that looks at the blindfold as the metaphor of the impartiality of justice and of the decision-maker.

3. THE CRIMINAL AND CRIMINAL PROCEDURE PERSPECTIVE

The section analyses the reasons for the improvement of alternative solutions to punishment, points out the fallacies of restorative justice, and deepens its relation with punitive justice during the phases of the trial. Its practical approach, reached through the contribution of scholars and judges, helps understanding the function of restorative justice in action, its strengths and weaknesses. The most striking chapter is that of Massimo Donini, who deals in a technical way with a desirable renovation of the Italian criminal system. He suggests considering the “restored crime” as a specific autonomous offence. The Italian penal code determines the *quantum* of the sanction within a pre-established frame, which does not take into account the effective or potential restoration of the crime. Indeed, the criminal system envisages the sanction as the doubling of the committed evil, and it evaluates it in relation to the mere fact, without considering, or partially considering, other elements, such as the role of the victim or the consequences of the injure. On the contrary, Donini argues that the reparation of the crime is relevant to the evaluation of the sanction: punishment is required the more, the less reparation is provided. Thus, it is desirable to consider reparation as an element that identifies a certain type of crime, rather than a mere mitigating circumstance. The restored crime can be compared to the category of attempted crime: according to the author, both should cover a preliminary position in the establishment of the general frame of punishment. Donini distinguishes his reasoning from the common arguments over restorative approaches and the need for their implementation, by going beyond: he thinks restorative justice in a way that affects not only the executive phase of the trial, but the whole process. This change is possible only through renovating the conception of “restored crime” within the Criminal Code.

4. THE CRIMINOLOGIST AND PSYCHOANALYTIC PERSPECTIVE

The authors of this section focus on justice as a way to heal from evil, either by denying it through the alienation of the offender from society, or by “treating” it through the involvement of the criminal and the victim in a critical thinking over the deed (Ceretti). To explain the different approach of retributive and restorative justice, Attilio Balestrieri and Raffaele Bracalenti use the convincing metaphor of justice as the medicine that defeats illness, and the comparison between retributive justice and homeopathic products, namely drugs that contain, in a small percentage, the same chemical principle of the illness. They find theoretical legitimation in the principle *similia similibus curantur*. However, medical studies never testified any effective healing capacity. On the contrary, precisely because they contain an amount of the poisoning substance, they might even worsen the conditions of the patient. Their restoring outcome can only be linked to the so-called placebo effect, a demonstrated positive reaction by the human body that arises from personal expectations over the medicine. Regardless of the active ingredient of the drug, the optimistic belief improves the healing properties. According to the authors, punitive jus-

tice, similarly to homeopathic products, aims at healing the evil through further evil, the punishment. Thus, its “healing” effect can be attributed only to an alike placebo effect. Yet, the authors argue that not even the placebo impact is relevant in this case, since the actual healing outcome requires the patient/offender to previously feel a certain “attraction” towards the success of the procedure, which is not the case within the criminal context, since the offender tends to disbelieve in the rehabilitative effect of the sanction. On the contrary, restorative justice denies that violence can heal violence. Rather, it aims at restoring both the criminal and the victim by fostering them to reflect over the past in a critical way. This process implies a constructive dialogue between them, in order to reach a common truth. The confrontation helps acquiring awareness over past events, through the establishment of responsibilities, reasons, and personal experiences that might have influenced the development of the events (Eusebi).

Indeed, truth discovery is the first step toward the reconstruction of broken relationships, according to models of dialogic justice (Reggio 2015). Truth is understood as the personal meaning that the parties attribute to events, since restorative justice does not impose its explanation; rather it accords autonomy of thinking. The effectivity of its therapy is based on the parties’ active engagement, which generates a placebo effect: those involved feel themselves closer to the procedure and more willing to comply with it. Again, in lack of any other proved outcome, the healing capacity of restorative justice should be attributed, at least, to the placebo effect. The metaphor of homeopathic drugs shows in a clear way the major contradiction of punitive justice, namely its practice to defy violence by using further violence; while the inspiration from the medical field is involving and innovative, since it avoids the common frame of arguments in comparing criminal and restorative models of justice. However, as it is the case in the first section of the book, such a metaphor is biased in its starting point, since it assumes that the aim of both kinds of justice is to heal the criminal. Yet, criminal justice primarily serves different functions, as the retributive, the deterrent, and the neutralizing ones; while the purpose of “healing” the offender, through his re-education, covers a secondary position. Likewise, the dialogue dimension, which is praised by the supporters of restorative justice, has an undeniable role in reconstructing the relationship between the parties, but this function does not correspond to the main goals of criminal justice. Furthermore, the adoption of the term “evil”, both to address the sanction and the crime/criminal, reveals the Christian affiliation of restorative justice proposals. Even though the authors repeatedly claim that justice should not promote a *Weltanschauung*, or a moral system, nor it should be attributed to a notion of metaphysical order, they make reference to an idea of evil within the field of justice, that jeopardises the coherence of the whole text. Similarly, while stating that restorative justice does not necessarily imply the idea of pardon nor it arises from a conception of justice linked to religious do-goodism, they cannot defeat the critics to restorative justice of being impregnated with Christian principles of reconciliation, forgiveness, and repentance. The authors claim to support a value-free justice that, finally, is not as such.

5. THE CUSTOM PERSPECTIVE

The last section approaches the issue of restorative justice from a practical point of view, by dealing with some Italian experiences within the criminal system. The authors suggest, inter alia, the reintroduction of the “victim dimension” within the personal reflection of the criminal. The awareness of the existence of the victim and the painful consequences of the crime are usually understated issues: offenders tend to focus more on their person-

al harmful conditions in prison. Their narrations are mostly solipsistic (Brunelli). Introducing a reflection over the relationship between the criminal and the victim is a step towards a new awareness of the self in relation with the other (the victim) and the others (the whole society).

Finally, the authors suggest a broad understanding of the restorative approach, by promoting it even beyond its original borders of criminal justice. For instance, within the field of labour relationships, the restorative approach provides informal tools to deal with internal conflicts that could affect not only the interpersonal relationship but also the economic, social and political well-being of the whole company (Mannozi, Lodigiani). Despite the innovative extension of the application of restorative approaches beyond the field of justice, these considerations go far beyond the scope of the book, which deals with the concept, the development, and the application of restorative justice. Thus, they result off topic and they divert the attention from the potential of the reparative approach precisely within the boundaries of the criminal system.

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