

A RESPONSE TO STEPHEN J. POPE

I would like to thank Professor Pope for his important and stimulating address and Mary Ann Hinsdale for this generous invitation.¹ I am reminded of my year working as a teaching assistant for Steve, which began just before September 11, 2001. While many professors dutifully marched through planned syllabi, Steve cultivated and modeled alternatives to the reigning retributive impulses for our students. Nearly a decade later, the need for a prophetic message of peace is no less urgent. As Steve convincingly argues, an approach aimed at restoring right relationship that incorporates yet exceeds security offers a vital countersign to the vindictiveness that pervades our common experience. Building upon this defense of its prophetic and sacramental modes, I wish to probe ways restorative justice as orientation and practice may be disruptive and disclosive. I focus on the tradition's promise in terms of its emphasis on relationality and its incorporation of truth-telling and accountability with reconciliation.

Restorative justice's operative social anthropology seems to be a particularly prophetic transmitter of the countercultural values to which Steve suggests the tradition bears witness. A vision of the human person who realizes dignity in community profoundly disrupts reductive atomistic assumptions. This anthropology underscores the constitutive role of culture in directing human self-understanding and action, disabusing notions that we are "wired to retaliate" or tendencies to reduce perpetrators to their worst act, free from social context.² The relational orientation of restorative justice that flows from its social anthropology (whether rooted, for example, in *ubuntu* or Trinitarian commitments) likewise disrupts conceptions of justice that privilege contractual exchange³ and retributivist modes of redress, reorienting our view of crime to a "rupture of relationships that requires

¹I am likewise grateful to Jonathan Rothchild, Mark Potter, and David DeCosse for constructive reviews of a draft of this response, and in particular, for Jonathan's own helpful work in the area of restorative justice.

²In an earlier version of his plenary address, Pope discusses the potential "law and order" critique of restorative justice, which rests on what he terms a naïve neo-Darwinian assumption that humans are wired to retaliate for "good evolutionary reasons." He counters that brain studies have found that both revenge and reconciliatory behaviors excite our pleasure centers and that "forgiveness provides evolutionary payoff by re-establishing relations of reciprocity after a breach of cooperation."

³As Pope Benedict notes in his recent social encyclical, "The economy in the global era seems to privilege the former logic, that of contractual exchange, but directly or indirectly it also demonstrates its need for the other two: political logic, and the logic of the unconditional gift." Pope Benedict XVI, *Caritas in veritate* (June 29, 2009) no. 37

repair.”⁴ Hence restorative justice commitments are potentially disclosive of Trinitarian anthropology,⁵ the covenantal context of biblical justice, a spirituality of reconciliation,⁶ and the ways Christian mercy “thickens” justice, as James Keenan puts it.⁷

In light of these foundational resonances and the others Steve articulates, his applications of restorative justice within the church ring poignantly appropriate. Local initiatives to employ mediation with victims of clergy sexual abuse constitute significant steps and assume added urgency as other nations look to the lessons learned from the U.S. experience. Yet wider scale efforts at public redress by the church universal are also necessary to begin to enact a communal restoration of trust for the many indirect ‘victims,’ as well as to begin to rehabilitate the prophetic legitimacy of her wider social witness. Incorporating truth-telling, accountability and reconciliation on an international scale would not replace ongoing work toward mechanisms of accountability and smaller scale reparations, yet it holds greater promise for effecting a sign and instrument of healing than does defensiveness or silent endurance.⁸ Robert Schreiter has written about the power

available at http://www.vatican.va/holy_father/benedict_xvi/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate_en.html. Accessed May 28, 2010.

⁴Kurt M. Denk, S.J., “Restorative Justice and Catholic Social Thought: Challenges as Opportunities for Society, Church and Academy,” lecture for the University of San Francisco’s Lane Center for Catholic Studies and Social Thought (February 29, 2008), forthcoming in *Conversations in Catholic Studies and Social Thought: Lane Center Lectures 2005-2010* (San Francisco: University of San Francisco Press, 2010).

⁵Whereas some charge “social trinitarianism” risks projection, belief in a Trinitarian God at least entails a robustly social anthropology if relationship is the ground of all being. See, e.g., Catherine Mowry LaCugna, *God For Us: The Trinity and the Christian Life* (San Francisco: HarperSanFrancisco, 1991). For objections to social trinitarianism see Frederick Christian Bauerschmidt, “The Trinity,” in David Matzko McCarthy and M. Therese Lysaught, eds., *Gathered for the Journey: Moral Theology in Catholic Perspective* (Grand Rapids, MI: Eerdmans, 2007), 77-80.

⁶Robert J. Schreiter argues reconciliation is better understood as a spirituality than as a strategy. See *Reconciliation: Mission and Ministry in a Changing Social Order* (Maryknoll, NY: Orbis Books 1992) chapter four. He describes a spirituality of reconciliation as characterized by “an attitude of listening and waiting,” “attention and compassion,” and a “post-exilic stance” (71-73).

⁷James Keenan suggests that mercy thickens notions of justice (as well as fidelity and self-care) in Christian communities. See Daniel Harrington, S.J. and James F. Keenan, S.J., *Jesus and Virtue Ethics: Building Bridges between New Testament Studies and Moral Theology* (Lanham, MD: Sheed & Ward, 2002), 126.

⁸As John Paul II notes, “forgiveness, far from precluding the search for truth, actually requires it. The evil which has been done must be acknowledged and as far as possible corrected . . . [because] an essential requirement for forgiveness and reconciliation is justice.” Pope John Paul II, “Replacing the Inhuman Logic,” (Message for World Day of Peace of January 1, 1997) *Origins* 26 (April 24, 1997), 719.

of the church's rituals to "give expression to feelings so painful and so deep that no other way can be found to bear them."⁹

APPLICATIONS AD EXTRA

The prophetic dimension of restorative justice also holds fertile potential ad extra, as we have heard. Whereas its primary locus of application, criminal justice, sustains a growing need, given trends toward criminalizing society and incarcerating social problems, (to say nothing of the injustices internal to prison system),¹⁰ restorative justice also recommends itself to others characterized as "offenders." In the arena of undocumented immigration, for example, recent developments and escalating tensions¹¹ reveal a retributivist outlook that engenders calcification of divisions rather than a restoration of right relationships. The consequent focus on militarized borders, punitive measures, and demonization has not delivered the desired effect of stemming irregular flows. A restorative justice framework contests the reduction of irregular migrants to lawbreakers or sources of labor as well as accompanying deportation and deportation-by-attribution practices. Strategies

⁹Schreiter, 75.

¹⁰See for example Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Pantheon Books, 1978); Marc Mauer, *The Sentencing Project, The Race to Incarcerate* (New York: The New Press, 1999). For analyses of the prison industrial complex from an explicitly Christian perspective, see Mark L. Taylor, *The Executed God: The Way of the Cross in Lockdown America* (Minneapolis: Fortress Press, 2001); James Samuel Logan, *Good Punishment? Christian Moral Practice and U.S. Imprisonment* (Grand Rapids, MI: William B. Eerdmans, 2008).

¹¹For example on April 23, 2010, Governor Jan Brewer of Arizona signed into law an especially broad and stringent immigration bill (S.B. 1070), criminalizing the failure to carry immigration papers and granting police wide latitude to detain anyone suspected of being in the country outside of legal channels. See Randal C. Archibold, "Arizona Enacts Stringent Law on Immigration," *New York Times* (April 24, 2010) A1. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 added Section 287(g) to the Immigration and Nationality Act (INA), authorizing the U.S. Department of Homeland Security to enter into agreements with state and local law enforcement agencies, permitting designated officers to perform immigration law enforcement functions ("provided that the local law enforcement officers receive appropriate training and function under the supervision of sworn U.S. Immigration and Customs Enforcement (ICE) officers"). See ICE's own description of this function at <http://www.ice.gov/pi/news/factsheets/070622factsheet287gprogover.htm>. Accessed May 20, 2010. In 2006, ICE allocated \$5 million to 287(g) efforts, and in 2010 it allocated \$68 million to such delegation. Raha Jorjani, "The Real-time Effect of Cooperation Between the Criminal Justice System and Immigration Enforcement," lecture at Santa Clara Law School, April 6, 2010. Hence, these recent developments nationally and within the border state of Arizona raise concerns about the potential for racial profiling, dismantling community members' trust in local law enforcement officials, and diversion of resources.

marked by the commitments Steve outlines would pave a more prophetic path to peace than have the existing tactics of the “immigration industrial complex.”¹²

A restorative justice paradigm enlarges our perspective on who is “criminal” and who is “victim” in cases of undocumented immigration. Its end of reconciled communities challenges not only the false alternatives of expulsion to a shadow existence or unilateral assimilation, but more broadly, unequal interdependence among nations that abets extralegal flows. An approach committed to truth-telling regarding the nation’s historical confrontations with immigrant waves, and repentance regarding its complicity in generating “push” and “pull” factors could reframe the debate beyond amnesic scapegoating, competing goods, or even the limits of an ethic of hospitality alone. At a more concrete level, a commitment to humanizing dialogue among polarized stakeholders; yoking conditional amnesty to forms of accountability for migrants, employers and receiving communities alike; and linking systemic overhaul to longer term investment and trade equity would align reform efforts toward more future-oriented solutions that serve both security and justice. Hence, a restorative justice framework bears consideration beyond arenas of criminal and transitional justice; the havoc wreaked by exploitative and extractive practices is likewise ripe for consideration in terms of repairing harm and restoring humans’ right relationship to the earth.¹³

POTENTIAL BARRIERS TO MUTUAL TRANSFORMATION

Despite its disclosive and disruptive promise, restorative justice remains open to several challenges. First, it risks reinscribing unjust norms and power dynamics. Elsewhere Steve rightly identifies this pitfall, proposing “conciliation” rather than reconciliation in the Salvadoran context, for example;¹⁴ yet it remains

¹²See Tanya Golash-Boza, “The Immigration Industrial Complex: Why We Enforce Immigration Policies Destined to Fail” *Sociology Compass* 3.2 (Feb 2009) 295–309 for a genealogy of this idea, which alludes to the conflation of national security with immigration law enforcement and “the confluence of public and private sector interests in the criminalization of undocumented migration, immigration law enforcement, and the promotion of ‘anti-illegal’ rhetoric” (295).

¹³Family resemblances between restorative justice and environmental restorationist goals have begun to be explored. See for example Fred H. Bestorn, “Environmental Restoration as an Issue of Justice,” in Katherine Van Wormer, ed., *Restorative Justice Across the East and West* (Taoyuan, Taiwan: Casa Verde Publishing, 2008), 205–229.

¹⁴“Since “re-conciliation” presumes the fracturing of a previously in-tact relationship and, by contrast, the civil war in El Salvador “brought immense, long-term social strains to a violent head,” Pope suggests the term “conciliation” as a more “honest and appropriate description of the Salvadoran task. Stephen J. Pope, “The Convergence of Forgiveness and Justice: Lessons from El Salvador,” *Theological Studies* 64 (December 2003), 835.

imperative to safeguard against this hazard particularly as the framework gets appropriated. It may be that some arenas of injustice are ill suited to a restorative approach; feminist scholars and antiviolence activists have argued that the process risks reprivatizing domestic or intimate violence, for example.¹⁵ We can think of multiple examples of constrained agency where people are not genuinely free to participate, due to distorted circle power dynamics (e.g. the subordination of women in some Canadian First Nation communities¹⁶) or where they feel coerced to conciliate or forgive out of fear of reprisal (e.g., temporary workers, whether they be contingent faculty or desperate day laborers—may be only *technically* “free” to contest unjust terms).¹⁷ In any context, however, insensitivity to invisible injustice may compromise its effectiveness. Whereas restorative justice may check our tendencies toward bias, it remains unclear what mechanisms ensure bias does not compromise its own practices.¹⁸ Hence safeguarding the full and equal protection of participants beyond simply bringing players to the table constitutes a

¹⁵See for example James Ptacek, ed., *Restorative Justice and Violence against Women* (New York: Oxford University Press, 2010). Even Howard Zehr now suggests that “domestic violence is probably the most problematic area of application, and here great caution is advised” (*The Little Book of Restorative Justice* (Intercourse, PA: Good Books, 2002), 11, 39). Feminist concerns typically center around “women’s safety, offender accountability, and the broader politics of gender and race.” See Ptacek, 19. A diversity of feminist responses to restorative justice may be found, however, including some compelling retrievals of overlapping values across restorative justice and feminist frameworks. See Ruth Morris’ proposal of “transformative justice,” for example, as a means of navigating the fertile potential and the limitations of restorative justice from a feminist perspective. Ruth Morris, “Not Enough!” *Mediation Quarterly* 12:3 (1995): 285-291.

¹⁶Reports on women’s experiences in Canadian circle sentencing raise concerns that women’s subordination in some Canadian First Nations communities prevents them from entering the circle on an equal basis. In some instances women have been excluded, silenced, or harmed where power relations were not recognized or gendered violence not deemed serious in nature. See Kathleen Daly and Julie Stubbs, “Feminist Engagement with Restorative Justice,” *Theoretical Criminology* 10.1 (2006) 10; Rashmi Goel, “No Women and the Center: The Use of the Canadian Sentencing Circle in Domestic Violence Cases,” *Wisconsin Women’s Law Journal* 15 (2000) 294-334; Wendy Stewart, Audrey Huntley and Fay Blaney, *The Implications of Restorative Justice for Aboriginal Women and Children Survivors of Violence: A Comparative Overview of Five Communities in British Columbia*. (Ottawa: Law Commission of Canada, 2001).

¹⁷Michael Walzer refers to similar phenomena as “exchanges born of desperation.” See Michael Walzer, *Spheres of Justice* (Basic Books, 1983), 121.

¹⁸As the authors of the 1985 South African Kairos Document insist, “no reconciliation, no forgiveness, and no negotiations are possible without repentance.” *The Kairos Document: Challenge to the Church: a Theological Comment on the Political Crisis in South Africa*. 2nd ed. (U.S. edition: Grand Rapids: Eerdmans, 1986), 3.1.

prerequisite for enduring healing and justice.¹⁹ Attending to what such hospitality and agency require should be prioritized alongside what gets restored.

A related concern is that restorative justice may be too sanguine about the ability to accomplish prophetic peace without creative conflict.²⁰ If we remain blind or beholden to unjust ideologies that perpetuate violence and injustice, overcoming them rather than reinscribing them may require more coercion than a restorative justice model allows. Reflecting (perhaps) a Thomistic optimism about operative grace, this approach wagers that participatory dialogue will enable transformative understanding. As Bryan Massingale has analogously cautioned in the case of Catholic social thought, “a view from the ‘underside of history’ severely tests this assumption, for victims of injustice readily perceive that the socially privileged seldom surrender their privileges voluntarily.”²¹ Contemporary challenges to a compassionate administration of justice abound. Recognition of group bias cautions restorative justice initiatives against idealistic and formulaic approaches alike.²² Since good intentions are insufficient to accomplish social

¹⁹It may not be readily apparent that the “freedom and responsibility” of participants is compromised. In a survey of South African scholars and participants of the Truth and Reconciliation Commission, some reported that the “quasi-liturgical character of the proceedings of the TRC tended to place undue pressure on survivors to forgive perpetrators in order to fulfill the conditions of amnesty,” thereby achieving a peaceful transfer of power but leaving many survivors feeling “cheated.” See Audrey R. Chapman, “Perspectives on Reconciliation within the Religious Community” in *Religion and Reconciliation in South Africa: Voices of Religious Leaders*, A. Chapman and B. Spong, eds., (Philadelphia: Templeton Foundation Press, 2003), 284-85 as cited in William Danaher, “Toward a Paschal Theology of Restorative Justice,” *Anglican Theological Review* 89:3 (2007), 362. Robert Schreiter analogously identifies liberation “from the structures and processes that permit and promote violence” as a prerequisite for reconciliation (Schreiter, 22).

²⁰See also Annalise Acorn, *Compulsory Compassion: A Critique of Restorative Justice* (Vancouver: UBC Press, 2005).

²¹Massingale refers here to a line from Martin Luther King Jr.’s “Letter from Birmingham Jail” (April 16, 1963). Massingale continues, “. . . calls for social and systemic change arouse a resistance and recalcitrance in the privileged that yields only in the face of sustained demands, determined pressure, ideological struggle, and nonviolent social conflict.” Bryan N. Massingale, “The Scandal of Poverty: ‘Cultured Indifference’ and the Option for the Poor Post-Katrina,” *Journal of Religion and Society* Supplement Series 4. Edited by Dennis Hamm, S.J., and Gail S. Risch. Omaha: The Kripke Center, 2008 at <http://moses.creighton.edu/JRS/2008/2008-29.html>, 61.

²²In particular, significant racial disparities in the criminal justice system (including “new Jim Crow” sentencing practices in recent decades) and in society at large portend unequal power dynamics between offenders and victims. Hence, white privilege presents one potentially formidable barrier in facilitating encounters on a restorative justice model. Group bias as it impacts class, ethnic, sexual, gender or other differences may also subtly or overtly undermine attempts to bring participants into dialogue marked by basic equality, mutuality and candor.

transformation or justice,²³ an Arizona sheriff might not of her own accord sit down with a migrant, uncoerced. Finally, a potential obstacle to extending restorative justice lies in the fact that it entails a process that is slow and cumbersome, disruptive of our penchant for ordered efficiency and expected outcomes.²⁴

RESPONSIBLE MERCY AS PRACTICE AND “GEOGRAPHY”

Nevertheless, I am quite sympathetic to Steve’s conviction that restorative justice offers a countersign to a culture of vengeance, not only in terms of its underlying values and analytical framework, but also by virtue of its concrete practices that train our imagination and model alternatives. Beyond initiatives bringing together victims and offenders, restorative justice commitments mark ventures that similarly disrupt the relentless exclusion of offenders. Not unlike the adversarial criminal justice system their members face, “[g]angs are bastions of conditional love—one false move and you find yourself on the outside . . .”²⁵ By contrast, the largest gang-intervention program in the country in the gang capital of Los Angeles—Homeboy Industries—offers at-risk and formerly gang-involved youth opportunities to contribute to society through job training and education.²⁶ In the face of few “felony-friendly employers,” Homebody Industries launched several businesses of its own, including a bakery, a silkscreen shop, and a café. These enterprises not only function as apprenticeships, they bring formerly rival gang members together to work side by side. The “therapeutic community” provides substance abuse, anger management, parenting, and other classes to holistically support and rehabilitate participants in ways the corrections system fails to do.²⁷ The organization embodies several elements Steve emphasizes, offering alternatives to incarceration, enacting reconciliation, and in so doing issuing a

²³Cf. Reinhold Niebuhr, *Moral Man Immoral Society: A Study in Ethics and Politics* (Charles Scribner’s Sons, 1932).

²⁴I am grateful to Mark Potter for highlighting this practical challenge. James Keenan’s articulation of mercy as the “willingness to enter into the chaos of another so as to respond to the other” resonates here. Daniel Harrington, S.J. and James F. Keenan, S.J., *Jesus and Virtue Ethics*, 126.

²⁵Homeboy Industries, on the other hand, “seeks to be a community of unconditional love.” Gregory Boyle, *Tattoos on the Heart: The Power of Boundless Compassion* (New York: Free Press, 2010), 94.

²⁶Mission statement, available at <http://www.homeboy-industries.org/index.php> (accessed May 24, 2010). Los Angeles County contains 1,100 gangs with nearly 86,000 members.

²⁷Civil rights attorney and gang prevention expert Connie Rice has remarked, “Greg Boyle is doing what our \$8 billion corrections system fails to do, which is rehabilitate people so they don’t go back to crimes.” Mandalit Del Barco, “Priest’s Answer to Gang Life Faces Hard Times,” available at <http://www.npr.org/templates/story/story.php?storyId=127019188> (accessed May 20, 2010).

prophetic call to treat social problems at their root rather than in their criminal manifestations alone. Above all, it restores by overcoming enmity and division through relationship building.

William Schweiker articulates “responsible mercy” as that which “. . . discloses the worth of persons within a system of justice when that system has gone awry and threatens to eradicate or efface human worth.”²⁸ At Homeboy, formerly incarcerated youth begin to feel their value and inhabit their status as children of God, as they are embraced in a community of kinship. Founder and director Greg Boyle responds to the Christian invitation to mimic a compassionate God by dismantling barriers that exclude. Restorative justice’s call summons conversion not only in intellectual and spiritual terms, but also with regard to where we place our bodies and extend our friendship. In Boyle’s words, “At the edges, we join the easily despised and the readily left out. We stand with the demonized so that the demonizing will stop. We situate ourselves right next to the disposable so that the day will come when we stop throwing people away.”²⁹ He often invokes the prophet Habakkuk whose words are apt for the painstaking, countercultural labor of restorative justice and peacebuilding: “The vision still has its time, presses on to fulfillment and it will not disappoint . . . and if it delays, wait for it.”³⁰

KRISTIN E. HEYER
Santa Clara University
Santa Clara, California

²⁸William Schweiker, “Criminal Justice and Responsible Mercy,” in Jonathan Rothchild, Matthew Myer Boulton and Kevin Jung, eds., *Doing Justice to Mercy: Religion, Law & Criminal Justice* (Charlottesville, VA: University of Virginia Press, 2007), 185.

²⁹Boyle, 190.

³⁰Habakkuk 2:3.