

"Redemption and Restoration is a thorough study produced by the cooperative efforts of faculty and friends of Mount St. Mary's University. In my experience, most middle-class American Catholics assume restorative justice is pie-in-the-sky liberalism barely supportable by facts, let alone by Church teaching and tradition. The collaborators of this work thoroughly disabuse the reader of such faulty notions, demonstrating that restorative justice is the justice of Scripture, is the justice illuminated by Catholic teaching and tradition, and is effective. In the face of a revenge-based criminal justice system that is morally bankrupt and threatens to financially bankrupt our entire society, we no longer have the option to muddle through. We can either follow after the revenge-pandering politicians, like lemmings rushing over the cliffs of ruin, or adhere to the moral authority of the Church and the Scriptures calling us to a different way: restorative justice."

—Dale S. Recinella, JD, MTS, Catholic Correctional Chaplain,
Florida Death Row

"Those of us who work in the criminal justice environment know that it is broken, a system where issues of race, poverty, even geography, ensure that the playing field is anything but equal. We need to change how this system works if we are to end the warehousing and killing of our own citizens. That's where restorative justice—and this book!—come in. Restorative justice is a powerful tool that transforms our understanding of crime and shifts our focus from 'broken laws' to damaged human relationships and the harm done to human dignity."

—Sr. Helen Prejean, CSJ
Author of *Dead Man Walking* and *The Death of Innocents*

"Bridges To Life brings together incarcerated offenders, victims of crime, and community volunteers in a restorative, faith-based process. The program has been active in 120 prisons across 12 states and five foreign countries. Among our 36,000 graduates, the rate of recidivism is 60% lower than the national average. There is a great demand for our involvement in transforming individual lives and the overall culture in prisons. The statistics and stories overwhelmingly prove that restorative justice works. I am so pleased to see this book with such comprehensive wisdom and information about restorative justice."

—John Sage, Founder and CEO of Bridges To Life

"In an era of mass incarceration, the American criminal justice system has become an unforgiving, heartbreaking place where optimism goes to die. *Redemption and Restoration* offers an inspiring alternative that focuses on restoring victims, protecting the community, and providing offenders with opportunity to change. This is a timely and important book that embraces the power of hope and allows for the possibility of reconciliation and justice. One finishes the book with a sense of urgency. We can't wait any longer to end this war against ourselves and restore trust and hope to our system of justice."

—Jim Wyda, Federal Public Defender for Maryland

"As a Catholic theologian with previous experience in law enforcement (corrections and policing) and youth ministry, I have seen first-hand how crime physically and emotionally harms persons, families, and communities. It also wounds, morally if not physically, the perpetrator and detrimentally impacts his or her family. Professionals working in the criminal justice system too—police, correctional officers, judges, and more—are deeply affected by what they do. Much of this is worsened when the focus of criminal justice is solely on retribution, with a state vs. offenders approach wherein authorities merely mete out punishment to criminals. The contributors to this much-needed volume propose that Catholics and others should both broaden and deepen our understanding of justice, integrating its varied forms (retributive justice, commutative justice, distributive justice, and social justice) so as to include and be reoriented toward restorative justice. Indeed, to borrow an adjective from recent popes, including Pope Francis, I would say this important endeavor exemplifies an *integral* justice that will help readers to promote and practice a just peace for all who are affected by crime in their communities."

—Tobias Winright

Maeder Endowed Chair of Health Care Ethics and Associate
Professor of Theological Ethics, Saint Louis University

"It is vitally important that we cultivate compassion and mercy in our relationships with one another and with those on the margins. We must stand with our brothers and sisters who know the deep wounds of crime and incarceration and who, too often, are disregarded and forgotten in our society. Restorative justice shows us a path toward true kinship, and this book offers great wisdom for how the Church can be a beacon for reconciliation, healing, and hope in a hurting world."

—Fr. Greg Boyle, SJ

Founder and Director of Homeboy Industries, author of *Tattoos on the Heart: The Power of Boundless Compassion* and *Barking to the Choir: The Power of Radical Kinship*

Redemption and Restoration

A Catholic Perspective on Restorative Justice

Edited by

Trudy D. Conway, David Matzko McCarthy,
and Vicki Schieber



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This book is dedicated to Shannon Schieber, Ruth Pelke,
Susie Jaeger, Julie Welch, and all other crime victims
whose goodness motivated others to do good in their names.
May they continue to inspire us to promote restorative justice
in our local communities and society.

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Foreword

The Catholic Church has a long history of engagement with restorative justice. In fact, in the early 1980s, the first group to which I (Howard) presented the overall concept was a national gathering of Catholic clergy engaged in prison ministry. Their deep engagement with the idea encouraged me to continue developing it, leading eventually to my book, *Changing Lenses: A New Focus for Crime and Justice*. In the following years, the Catholic community continued to be engaged through individual encounter and intentional ministry. This text highlights such transformational stories as testament to theological interpretation and a call for new engagement of the church at large.

I (Caitlin) was involved in poverty-related service work through the church from an early age. Over time, I grew increasingly concerned about the role that crime and incarceration played in perpetuating cycles of poverty. Restorative justice offered not only an alternative method of responding to violence but also a new lens for addressing instances of harm and conflict in the communities I served. Both the theories and applications provided me with concrete ways to live the tenets of Catholic social teaching and engage in intentional Christian relationship.

Early on, restorative justice was conceived as an alternative response to punitive punishment in the US criminal legal system. It calls for a new paradigm of viewing crime, not as laws broken, but as harm to human dignity and relationship. This harm creates needs and obligations for all those impacted. Today, restorative justice is a vibrant and growing movement that also seeks to transform systems of harm and conflict to include truth and reconciliation in postwar scenarios and nationwide racial healing efforts. Educational systems are increasingly adopting forms of restorative justice to address conflicts and wrongdoing.

The concept of justice underlying the criminal justice system is essentially individualistic and rights-based. Restorative justice, on the other hand, is an interrelational understanding of wrongdoing and justice that emphasizes the responsibilities inherent in relationships. Thus the principles of restorative justice call us to examine interpersonal relationships and hold ourselves and one another to a higher standard of accountability and reconciliation. The intentional engagement of restorative approaches within familiar, supportive settings such as parishes and schools provide us with spaces to rehearse this way of life so that we may better live it out in our families, friendships, workplaces, and communities.

Much of this book is directly applicable to those connected to the criminal legal system by profession, ministry, or personal experience. Its themes will also resonate with Catholics who are concerned about timely issues of mass incarceration, community violence, and racial justice in America. For readers who are new to restorative justice, this text offers a broad overview of its history, theology, and applications. For those who are already familiar, here you will find a nuanced interpretation from the Catholic perspective.

Violence and harm, of course, do not happen in a vacuum. The field of neuroscience is telling us more and more about the physiological and psychosocial impacts of trauma. In its cyclical nature, those impacted by violence (victim, offender, or community) are at higher risk of acting in ways that harm themselves or others. Restorative practices interrupt these cycles, allowing individuals to find healing and live more fully as God calls us to be in loving relationship with him, ourselves, and one another. May the wisdom offered in this book compel the Catholic community to live this sacred way of love in the world.

Caitlin Morneau
Howard Zehr

Acknowledgments

Restorative justice views persons as existing in a network of relationships. This book is a testament to the belief that we exist in such networks and thrive when we appreciate and foster supportive relationships. We three editors appreciate that Mount St. Mary's University (in Emmitsburg, Maryland) values community and fosters collaborative initiatives. When we were approached by the Catholic Mobilizing Network (CMN) about the possibility of working on a book about Catholic teaching on the death penalty, our response was enthusiastic. First of all, how could anyone be anything but enthusiastic about supporting the work of an organization initiated by Sr. Helen Prejean? Secondly, we knew this would give us an opportunity to draw faculty from a range of disciplines into dialogue about an important social justice issue. Our campus had been sponsoring lectures, conferences, projects, and courses on the death penalty for over a decade. We knew that in working together on a book about the death penalty, we would learn much from each other. We also welcomed the opportunity to contribute to the national discussion of the death penalty. CMN was very pleased when our book, *Where Justice and Mercy Meet*, won two national awards. They also appreciated how much we enjoyed working together on a collaborative book project. We were not surprised when Karen Clifton, the CMN director, asked us to work on a second book about restorative justice.

This second project brought us to focus on our own disciplinary research and to gather to discuss readings on restorative justice. We also invited to campus a number of speakers who were restorative justice practitioners, drawing into our discussions other faculty, students, and administrators. In 2014 CMN sponsored a conference on restorative justice at Catholic University at which the chapter authors from our campus presented and attended keynote and workshop sessions with off-campus chapter authors

and prominent practitioners of restorative justice. We also met with persons whose lives had been positively affected by the restorative justice programs described in this book. Our commitment to working to promote restorative justice in our communities and society has been deepened by exposure to so many persons whose lives are a testimony to the transformative power of restorative justice.

We are grateful for what we learned while working on this project. During this time, we have witnessed our country grappling with many issues centered on justice. Discussions about the need for criminal justice and prison reforms finally drew the attention of members of Congress and built support for reform efforts across political parties. Justice concerns, long present beneath the surface, boiled up into passionate expression in national and local discussions. Our nation witnessed protests, marches, and even riots focused on criminal justice concerns and a range of related justice issues tied to social and economic conditions, especially as they bear upon our inner cities. Our local communities and nation as a whole have been drawn into important discussions of justice. We welcomed the opportunity to reflect on justice at this time in our nation. We hope that our book's consideration of restorative justice contributes to the discussions of justice that will continue in our society in the future.

This book, as was the case with the death penalty book, was made possible through the collaborative work of a theologian, a philosopher, and a death penalty activist who was a sociology professor and business professional. As we worked on the book, our journeys headed in new, at times uncertain, directions. One of us retired and began an entirely new kind of service commitment. Another became an associate provost, assuming added responsibilities and leadership opportunities. The third extended a deeply personal restorative justice journey, as she commenced a murder victim family member-offender dialogue with the man who had murdered her daughter. We worked on this project as we jostled the responsibilities of busy and full lives devoted to our families and our Mount community. It was a pleasure to work with our colleagues, two former students, and invited external authors on these chapters. We valued the enthusiasm, guidance, and creative suggestions of the CMN staff. As always, we appreciated the support of our departments and their two excellent secretaries, Katie Soter and Gloria Balsley.

The virtue of hope surfaces frequently in the following chapters. Dorothy Day's emphasis on "hopeful perseverance" and the patience of laying one brick at a time defines the commitment of persons involved in restorative justice initiatives. Working on this book made us all too aware of all the

work that needs to be done. The witness of so many individuals, families, community organizers and ministers, and professionals in our justice system—who sustain their commitment to restorative justice in the most difficult circumstances—has inspired us to seek out ways that we can join their efforts. We have seen the creative efforts of CMN in educating Catholic communities across our country about the church’s commitment to restorative justice. At our university, we now look forward to creatively designing restorative justice programming for aspects of our campus life. We hope for the same regarding our readers—that each of you will consider how you can incorporate what you read in these chapters into your own local communities. Much work remains to be done. May we each have the “hopeful perseverance” that is so needed.

Vicki Schieber, Trudy D. Conway,
and David Matzko McCarthy
Editors

Catholic Mobilizing Network (CMN) is the national, Catholic organization working to end the death penalty and promote restorative justice. Working in close collaboration with the United States Conference of Catholic Bishops (USCCB) and living the mission of the Congregation of St. Joseph, CMN proclaims the Church’s pro-life teaching and prepares Catholics through education, advocacy, and prayer. The organization seeks to advance the Church’s prophetic message of responsibility, rehabilitation, and restoration in criminal justice and other incidents of harm. Education and advocacy materials such as presentations, short videos, workshop facilitator guides, state-specific fact sheets, prayer cards, parish bulletin inserts, and more are available at www.catholicmobilizing.org.

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Part I

Our Criminal Justice System

Chapter 1

Justice

Editors

Jane came home one day after work to find that her kitchen window had been broken. A burglar had come through the window, rummaged through the house, and been especially destructive to Jane's bedroom. She found that her jewelry had been stolen; particularly painful was the loss of her grandmother's wedding ring. Jane had a dog camera in the house, and, by using the playback feature, she was able to identify her nineteen-year-old neighbor. The young woman was arrested, and the stolen property recovered. The teenager pleaded guilty, received two years' probation, was obliged to enter a residential drug treatment, and, once released, was required to stay drug free and employed. Still, some matters were unresolved for Jane: the damage to her house, the personal violation and desecration of her home, and the rupture in her relationship with her long-time neighbors.¹

Jane, the offender, and her parents participated in a restorative justice program. During a lengthy meeting, Jane explained that she felt "trampled on and violated," and to make matters worse, by "someone who I babysat for and sang happy birthday to for the last 15 years," someone she thought

¹ Lorenn Walker, "Restorative Justice: Definition and Purpose," in *Restorative Justice Today: Practical Applications*, ed. Katherine S. van Wormer and Lorenn Walker, 3–4 (Los Angeles: Sage Publications, 2013). Walker notes that Jane's story is "loosely based on real incidents" (4).

“would protect my house.”² The young woman expressed her feelings of guilt, shame, and remorse. Her parents conveyed their own sense of guilt and regret—that Jane had been betrayed, that through their failures as parents they had contributed to their daughter’s drug addiction and personal decline. The young woman pledged to pay for the cost of damages to Jane’s house and to set out on a better, drug-free path. The effects of the meeting were salutary. But Jane’s anxiety would still linger. The process of restorative justice, however, did open a route to personal restoration and a renewal of her relationship with the young woman and her parents.

Jane’s story, the crime of neighbor against neighbor, is a common one; becoming more and more frequent is the turn to restorative justice for a real resolution to the suffering and harm caused by crime. As you will find throughout this book, restorative justice attends first of all to the injuries experienced by victims and the fractures created within communities. In this chapter on justice as a general term, however, we will focus specifically on the difference it makes that Jane knows well the person who has harmed her and violated her home. Because Jane knows the offender, her suffering is, in a sense, increased. She has been betrayed. Taken from her has been not only her property but also relationships she thought that she could trust and depend on as well as a sense of home and neighborhood as a safe place—as her place. The personal nature of the crime increases the pain of loss, but it seems that interpersonal loss also encourages a desire for restoration with the young woman and her family. Jane sees the young woman not only as a drug-addicted thief but also as a teenager who has lost her way, as a neighbor whom she has learned to love.

Jane’s story introduces important questions for this chapter on justice. Jane has a relationship with the young woman and her family. Does this relationship make the process subsequent to the crime and its outcome more or less just? Do relationships cloud justice or clarify it? Is justice fundamentally impersonal or personal? Restorative justice is based on the belief that justice depends upon roles and relationships within community. Indeed, the process of restorative justice is directed to restoring persons, calling offenders to responsibility to others and community, and bringing together people who have been estranged. In this chapter, we will consider this question: Is such a person-centered and relationship-based process justice at all?

² Walker, “Restorative Justice,” 4.

The Fabric of Human Life

David Cloutier

Justice is like oxygen: we might not be able to see it, but in fact we rely on it at every moment for our survival. More precisely, justice is like the oxygen needed for community life, and without community life, we would not only be unhappy (who wants to be lonely or constantly suspicious of others?) but we would also quickly face threats to our survival, from other humans, from nature, or from our sheer weakness in being able to provide basic material needs for ourselves. In short, it would be almost unthinkable to imagine human communities without an idea of justice.

But what exactly is justice? Where does it come from? And how do we get it wrong? Even if we see that justice is necessary for life, we are also likely to see that people are constantly disagreeing about it. And this disagreement is not new: Great thinkers in Western civilization have carried on competing arguments about justice for thousands of years, and some have even contended that all these disagreements show that justice is really an illusion, a cover-up, a verbal manipulation of others to get them to behave the way we want them to behave. There is no real “justice,” these people say; there is just the use of different, self-serving claims about justice in a battle for power.

In this essay, I’ll explain some of the basic ideas that we need to get straight in order to have clear and meaningful conversations about justice. I’ll start by identifying a basic way of thinking about what justice is in human relationships; it is what people deserve. I’ll then ask some deeper questions about how we work out our mental pictures of how human relationships should be and who deserves what. Finally, I’ll look at some common errors that people make when trying to sort out questions of justice. With all these ideas in mind, the reader will be ready to analyze more closely the questions of this book on a particular sort of justice, called restorative justice.

Justice: What We Deserve

I mentioned before that some people think the whole idea of justice is an illusion. People will say, “It’s just a dog-eat-dog world” or “It’s survival of the fittest.” Usually what they mean is that people don’t treat others the right way, so you just have to take whatever you can get. These ideas are reflected in a famous argument in the writings of the ancient philosopher

Plato. The idea of justice is mocked by a thought experiment: What if you had a “ring of invisibility” and could get away with doing all sorts of things you’d otherwise consider unjust? Would you steal if you knew you couldn’t get caught? Would you cheat on your partner if no one could see it? According to this thought experiment, everyone *would* take advantage of that invisibility, and simply throw their ideas of justice out the window. This shows that justice is just something we make up. We use the idea of justice to get people to behave correctly, even if no one is looking. But in reality, without fear of punishment, people don’t really believe it.

Or do they? Let’s consider this position—call it “justice-skepticism.” Would you steal if you could get away with it? Most people often face opportunities to appropriate property without paying, but they don’t do it. And I think this is because we recognize something about theft that is wrong—unjust. Yet I often ask my students if they illegally download music online. Some say they do, but others do not. Some downloaders indicate that this is not “really stealing” because no one gets hurt and because there is essentially no scarcity of downloads. But of course, this answer suggests they *do* have standards for justice, and we are really arguing about what justice is, in terms of property. That is, they have defined justice in terms of not harming others—if you can take property but not harm others, then it is not stealing.

Or take another example: Would you cheat on your partner? A lot of my students wouldn’t, *even if* no one ever found out. Indeed, they are disgusted by the idea! And I typically needle them in response that no one is “hurt” physically by a little cheating, if no one ever finds out. Students push back, insisting that “the relationship” is hurt, regardless. But here again, they are relying on some standard for justice. The point is, it is very hard to sustain a complete skepticism about justice. Our behavior when faced with these rules suggest we may have different ideas about what justice requires, but all sides are working with *some* idea of justice.

Even in more everyday matters, our behavior suggests the skeptical position is wrong. There are many experiments suggesting that people usually do the right thing, even if they could get away with not doing the right thing. For example, experiments have shown that people leave the same tip, regardless of whether they are at a restaurant they go to frequently or they are in a distant city to which they won’t return.³ No punishment will happen, no future consequences will befall them, and yet they still leave

³ David Johnston, *A Brief History of Justice* (West Sussex, UK: Blackwell, 2011), 10.

the same tip. If we are not to assume that these people are all just foolish suckers, then we should recognize that there does seem to be something to this idea of justice.

Of course, many people *don't* leave the same tip, if their service is bad. This observation can help us to see what is going on when determining a tip—what I called above the “standards for justice”—when people are making judgments about what another person *deserves*. This is a very traditional definition of what justice is at the most basic level. Justice is giving to each what is due, what is deserved. Saint Thomas Aquinas writes, “Justice is a habit whereby a man renders to each one his due by a constant and perpetual will.”⁴ What it means to do justice is to choose consistently to give others what they deserve. If the service is great, they deserve a better tip; if it's bad, they deserve less.

This sense of standards about deserving seems to be very deep within us. When children cry out, “It's not fair,” what they mean is, “I'm not getting what I deserve.” (They may be wrong, but they are appealing to the idea of deserving something.) The word “deserve” suggests a certain picture of what right relationship looks like. Even children have some sense of what a balanced, reciprocal relationship is supposed to look like, and they are convinced it has been violated. As we grow up, often our sense of justice matures, so that we become upset not only when we ourselves don't get what we deserve but also when we see others not getting what they deserve. Maybe we only do this for friends and family, or maybe we do it for strangers, too. But our sense of injury from people not getting what they deserve seems to extend beyond the self.

To say that people “deserve” something—or, as we sometimes put it, that they have “a right” to it—requires that we have a prior sense of what the appropriate, balanced, reciprocal relationship is among human beings. That picture, of how relationships are supposed to be, is the backdrop against which we make judgments about justice. In order to receive what is deserved, someone has to give what is deserved—even if the “giving” is just a matter of leaving someone else alone, letting them do what they have a right to do.

To this point, things are pretty simple. Two ideas are key: When we talk about justice, we are talking about people deserving something, and in order to talk about “deserving,” we need to have a picture of what the right relationship is. Put this way, we can see that this justice thing is operating

⁴ *Summa Theologica*, trans. Fathers of English Dominican Province (New York: Benziger Brothers, 1947), II-II, q. 58, a. 2.

all the time. Hopefully, we live in places where most of the time, everyone is in fact getting more or less what they deserve from others, but that's not happening automatically. It's really going on in our own behavior and the behavior of others. People are doing their jobs and getting paid, parents and children are getting along, friends are keeping their word to each other, buyers and sellers are engaging in roughly equal exchanges of goods and money. And we notice *injustice* because it is a break in that pattern: someone is acting to interrupt these ordinary relationships. For example, when we call something a "rip-off," we are saying that someone has just charged us more than we really think something is worth.

Justice: Rules of Roles and Relationships

However, let's make this a little more challenging by thinking about two problems that complicate the simple "deserve or not" picture. First, let's return to our tipping example. A tip is also called a "gratuity"—which means it is a kind of gift, something we are not required by law to pay. (Laws are ordinarily the tools we use to name more clearly what justice requires in different relationships.) Since we don't *have to* leave a tip, why do we do it? And why do we give a gratuity only sometimes, for some services and not others? There are clearly rules about who gets tips and who doesn't, but these aren't enforced by any laws. (Should super-friendly checkout clerks be outraged that there's no tip line on your credit card receipt at the local superstore? Justice in tipping seems rather mysterious. Yet it's still operating.)

And here's a second problem: Let's say we have these ordinary relationships going on, people doing their jobs, parents and children getting along, slaves obeying their masters . . . Wait a minute. That suddenly seems wrong to us, but to many people in many human societies, slaves working for masters didn't seem any stranger than a lot of other relationships. This is what masters deserved from their slaves. The same might have been true for women obeying their husbands. In those societies, "justice" would have meant women and slaves doing what they were supposed to do, just as workers ordinarily obey their bosses. And "injustice" would have been the opposite. Yet of course, we now think that in those cases (such as slavery) it was the ordinary, acceptable, taken-for-granted relationship that was actually the *unjust* one.

These examples (of formerly "just" but clearly unjust practices) make things more complicated, allowing us to dig deeper into how we form

our judgments about who deserves what. How should we name this complication? These two examples are very different, yet each one makes the same point: Our sense of what people deserve has to do with *who they are*—that is, what role we see them in, in relation to others. The relationship of diner/server differs from the relationship of customer/cashier (as everyone seems to know). The relationship of master/slave we now reject entirely, because we have rejected the very category “slave.” Differently, the relationship of husband/wife has been refined, so that the expectations of what is deserved are still there but have changed, and the relationship of boss/worker may still be one of obedience within legal limits. Students are still supposed to listen to their teachers and children to their parents, yet our framework for seeing these relationships has changed, too, and they also differ (though not completely) from one another.

Thus, we should draw an important conclusion: What we think people deserve backs up into who we think people are. Our sense of justice is based on the idea that people are not only “generic persons,” but are specific people in specific roles. Plato, the ancient Greek philosopher, is well known for developing an order of justice in his work *The Republic*. His classic definition of justice imagined a balanced relationship among the three parts of a human soul, and then applied this balanced relationship to the three classes of people in a society: workers, warriors, and leaders. Each has a specific role, and “justice” describes the relationships where each is doing for the other and for the society as a whole what they are supposed to do. In more traditional societies, this complex set of roles and relationships was seen as much more fixed and overriding. For example, think of societies with kings and lords and other noble classes by birth. What they “deserved” was completely defined by who they were, and who other people were in relation to their fixed social rank. And “injustice” named actions that disrupted this stable order.⁵ In these cases, retribution was a key part of justice, because it was seen as fixing the order. In our society, we still have hierarchies; yet, on the whole, we tend to see them as less fixed, as more a matter of what rank or position might be earned or chosen, and as less attached to the person in a fixed and total way. But even if our picture has become more fluid, notice that the examples of servers and slaves (or teachers, spouses, friends) still show how our sense of what is deserved in a given relationship is based on the *identities* of those in relationship. So while we might contest the contents of Plato’s picture, we

⁵ Johnston, *A Brief History of Justice*, 20–35.

nevertheless continue to understand just relationships in terms of people with a particular identity in relation to others with an identity. When we go on in this book to speak about “restorative justice,” we mean to talk primarily about the particular identities of offender and victim, and thus how we determine what is deserved by each in their relationship.

Where Does Our Sense of Justice Come From?

So, when we ask how to determine what people deserve, we are looking for a correct, accurate set of identities. Who exactly are the people in this particular relationship, and how should such people give what is due to the other? These judgments about justice are among the most complex yet most essential things we do as a society. In our own day, it is helpful to sort such judgments into three categories, each of which assumes that we can no longer appeal to a claim such as “I am a lord”—to fixed status—in order to understand justice. Rather, in each case, there is a *kind of equality* we are trying to work out; there is something that is deserved by every person. Aristotle saw all claims of justice, whatever the particular relationship, in terms of some kind of equality, and what needed to be determined was what counted as equal in that particular relationship. Thus, he talks about an “equality of ratios” or a proper “proportionality.”⁶ If two people are paid by the hour, “equal pay” would mean not that each got the same thing, but that each got the proportion of pay that was equal to the hours they worked. Similarly, we tend to think it is fair for a more experienced or skilled worker to receive greater pay for the same number of hours worked; here, the “equal pay” is pay that is proportional not only to hours worked, but to skill and experience.

Here we meet another wrinkle: *exact* equality often isn’t what justice means. I know for myself, growing up with one sister, very close in age, we were always very vigilant, crying out “it’s not fair” if we perceived any difference at all in what was coming from our parents. As we matured, of course, we recognized that carefully making sure our parents gave us the same amount of Christmas presents was not a very good sense of equality! Instead the equality entailed that our parents would give each child what he or she truly needed; thus, more need might require being given more

⁶ *Nicomachean Ethics*, ed. Lesley Brown, trans. David Ross (Oxford: Oxford University Press, 2009), 1131a10–1131b24. Aquinas follows this approach: *Summa Theologica* II-II, q. 57, a. 1.

attention. In a similar way, I am being fair and just to my students if I treat them all exactly equally in regard to some things, in terms of availability for office hours, the same level of difficulty of assignments, and basic personal respect. However, when I am grading their work, what counts as “fair” changes: it would not be fair to assign the same grade. The way I treat students equally in this way is to judge *their work*, rather than assign a grade based on other factors. But “equal” in this case doesn’t mean they all get the same thing.

In these examples, we can see that there are different ways to understand what it means to treat people fairly or justly in the sense of equally. Thus, the first type of judgment about equality is like my process of being fair in grading. It is a judgment that people deserve whatever they can get—so long as everyone follows a fair *process*. It’s the process that should be fair for everyone, but as long as the rules are fair (and enforced), what we deserve is based on what we do. Most commonly, we apply this to economic exchange. What is a fair price for an item at a garage sale or a fair wage? The answer may be, whatever a person can get the other person to pay, but without deception (which we usually call “fraud” in the economic sphere). People deserve what they achieve. In these types of scenarios, concerns about fairness typically center on whether the *procedures* followed to strike the bargain were fair—that is, one may claim that a wage or price is unfair if parties did not follow a common process to determine it, instead relying on force or fraud.

While this sort of judgment about what is deserved is quite common, the further concern about a “fair process” seems to rely on some other judgment about why anyone might “deserve” a fair process. For example, it is commonly believed that persons who commit crimes may be deprived of certain things that others ordinarily deserve—for example, the right to vote. But we also believe that offenders still deserve certain things, regardless of their alleged crimes—for example, a right to due process and a right to be punished in a way that is not “cruel and unusual.” Hence, this sort of judgment about “deserve” as what you can earn or get almost never stands by itself.

Thus, a second type of judgment is that people deserve certain things *apart from* and *beyond* what they are able to get from others, or what their actions earn them. That’s really why, whether I’m grading or leading class discussion, even poorly performing students still “deserve” something from me. Commonly, we apply this when we talk about ideas like civil rights or universal rights. But what is the basis for the idea that everyone deserves anything? It is often justified by reference to the philosopher Immanuel

Kant, or other thinkers who refined his argument. Kant suggested that persons treat themselves as ends in themselves, not just a means to some further end. What does that mean? This means that humans have an absolute value, not just a value relative to something they can do. Let's think about this: What worth does a pen have when it runs out of ink? It has no worth, because the pen is a writing instrument. Kant said that human beings have value not just because they are useful for some further end. It's clear that people treat themselves as if they are not just useful to get other things, but have some value beyond that. And if that is true of how I think of myself, it is correspondingly true of how others think of themselves. And it is unreasonable and inconsistent to believe this to be true about some people and not others. We might have worth as a means to some end, but we also have inherent value; we deserve something just because we are persons. For Kant, the most important value that humans have is best named as freedom, and so he concludes, "The universal law of justice is: act externally in such a way that the free use of your will is compatible with the freedom of everyone."⁷ This constitutes a kind of limit on simply getting whatever you can, since there is a need to respect others' seeking of their own ends. If you want others to respect your human freedom, Kant basically says, then act so as to respect their freedom, too.

A third is a judgment that people deserve certain things because they are given as a gift by God, and so no human power can be justified in denying them or taking them away. The American Declaration of Independence suggests that people "are endowed with certain inalienable rights by their Creator," and this is used as a justification to reject certain aspects of the unjust rule of the British monarch. This third idea is particularly important within the Catholic tradition. The *Catechism* explains, "*Human life is sacred* because from its beginning it involves the creative action of God and it remains for ever in a special relationship with the Creator, who is its sole end."⁸ Saint John Paul II in *Evangelium Vitae* states, "God proclaims that he is absolute Lord of the life of man, who is formed in his image and likeness (cf. Gen 1:26-28). Human life is thus given a sacred and inviolable character, which reflects the inviolability of the Creator himself."⁹

⁷ "The Metaphysical Elements of Justice," in Jonathan Westphal, ed., *Justice* (Indianapolis: Hackett, 1996), 149–56, here 151.

⁸ CDF, instruction, *Donum vitae*, intro. 5; quoted in *Catechism of the Catholic Church*, 2nd ed. (United States Catholic Conference—Libreria Editrice Vaticana, 1997), 2258.

⁹ *Evangelium Vitae* (Vatican City: Libreria Editrice Vaticana, 1995) 53.

The idea that people deserve things simply because they are created and loved by God as children doesn't preempt the first two ideas, but it does fill in some notorious "gaps" in their conception of what any person deserves. For example, those who appeal to Kant's reasoning can suggest that those without the capacity of freedom, and especially free reasoning, perhaps do not deserve to live. And those who simply appeal to fair process sometimes think that those who "lose" in the process or break the rules can then be denied basic rights. By appealing to a source of deserving beyond anyone's characteristics or behavior protects even the weakest and the worst: they are still human, still in relation to God, and so still deserve to be treated with the dignity accorded all human beings.

What Mistakes Do We Typically Make about Justice?

Carefully reflecting on the foundations of justice can be challenging. Even if we adopt the view of the church that all humans deserve something because they are children of God, it does not then resolve the questions of what exactly each human being deserves. We still have to work through questions of tipping and child-rearing and responding to crime. Still, reflection on the deeper foundations of our sense of justice is important especially because we are apt to make certain errors in judging what is deserved, and careful reflection on a deeper sense of what people deserve can check these errors. Three temptations are particularly common:

Error #1: To go with our feelings. This is probably the most important error to watch out for. In our society today, we are bombarded by images and stories, and these images and stories often are shown in order to get us to feel something—in order to manipulate our feelings. And how we feel does have something to do with seeking justice. In the Disney movie *Inside Out*, the emotion of anger is depicted essentially as a reaction to unfairness, and feeling this kind of "righteous anger" when we see injustice or experience it is a mark of our humanity. For some thinkers, the experience of sympathy at another's joy or suffering—putting yourself in the other person's shoes and feeling what he or she is feeling—is a key motivator to action.

However, like all feelings, anger and sympathy are easily manipulated and can deceive us about what the right course of action is. In *Inside Out*, the main character, Riley, has understandable feelings of anger at her parents for a poorly planned and disruptive move to San Francisco that lead her to believe she should abandon her parents and go back home to Minnesota. What we feel may be very shortsighted, or based simply on

our own prejudices, or on the predetermined conclusions about what is justly imposed by the person serving up the image. It may especially be affected by our individual experiences, however unrepresentative, and our immediate surroundings. We may not see the big picture. Take the issue of immigration: Both sides of this fierce and brutal debate claim they are on the side of justice, and both use stories and images to steer our emotions, to generate sympathy for their side and anger toward the other side. Who is right? Here we must seek the guidance of clearer practical judgments, judgments based on reason, and not simply on the strength of feeling.

Error #2: To rest with consequences. When we seek reasons to adjudicate conflicts over justice, we often see that people are quick to pull out “the data.” We are a results-oriented society, and we want to know what will happen if we choose to do X or to do Y. Like experiencing feelings, thinking about various results isn’t a bad idea. In fact, it’s good. For example, many people are moved to act fairly by someone saying, “Well, what if everybody did that?” What if everybody littered or cheated on their taxes or tried to cut in line? We have an idea that it would be bad, and so we clean up, pay our fair share, wait our turn. The philosophy called utilitarianism is essentially this idea transformed into a general rule: do whatever brings about the greatest good for the greatest number.

However, there are two weighty reasons why consequences aren’t enough in making a judgment about what people deserve. The first is this: The future is inherently uncertain, and we really can’t grasp what will happen as a result of our individual actions. In fact, many people will point out that my cutting in line doesn’t actually cause other people to do it—maybe some, but not others, and for other people, seeing someone cut in line may actually increase their willingness not to do the action. If this uncertainty about actual consequences is true for smaller actions, it is especially true for larger, society-wide questions. A lot of questions about economics in a society are difficult to work out because there are millions of interconnected choices that make up the economy—and it is not easy to understand how changing one thing will affect other things, especially in the longer run. This uncertainty is a challenging part of the issue of restorative justice, too. We can try to plan and have foresight, but we can’t ultimately know how things will turn out.

But even more serious than the uncertainty problem is another problem of relying solely on consequences to determine the greatest good for the greatest number: We may have to do some horrible things in order to achieve the supposed consequences we want. The greatest good for the greatest number may be brought about by doing things to a smaller

number of people that they don't deserve. Philosophers call these "lifeboat dilemmas" or "runaway trolley problems"—in which we are faced with a choice where we must kill one or two people to save five or six. Let's put it this way: If what is deserved is simply what produced the best overall consequences, then it is reasonable that a smaller number of people may be harmed to help a larger number. But does this sound just?

Well, it depends. What does "harm" mean? Here again, we cannot escape using reason, not simply in terms of what will happen—instrumental reason—but in terms of what should and should not happen: a sense of inherent dignity or natural rights. A politician who imposes a higher tax on wealthy people in order to build roads or parks or libraries for everyone is in a sense "harming" the wealthy. And people will argue whether it is fair to impose such a tax. But everyone will recognize that progressive taxation differs morally from dilemmas where we have to kill someone to benefit others. And that difference means we must be looking at something other than good consequences in order to determine what is just.

Error #3: To prefer "our people." A final temptation is to prefer our own tribe, and this one is very tricky—and to some extent stems from the first two errors. Emotional manipulations and calculations of what costs are worth paying to achieve certain benefits are often aimed at getting us to feel solidarity with those who are being harmed. If we feel like "our people" are getting hurt, we're more likely to rise up and call it an injustice.

However, we're also likely to be like a child who mistakenly cries out "it's not fair" when, in fact, it is fair, and we are just paying too much attention to our own concerns and not enough to others. It is a great moral achievement of our society that we are conditioned to think that everyone is equal and no one should get preferential treatment. No one should prefer "their own people." We relish the common interpretation of the Good Samaritan, the parable through which Jesus tells people to help their suffering neighbors across ethnic dividing lines.

As we saw above, Christians in particular have strong reasons to be wary of "preferring our own people." But here's where the tricky part comes in. What we mean in "not preferring our own" is clearly more complicated than it might at first appear. We do think our children deserve more *from us* than others do; we do devote more time and energy to our friends; we spend more time helping out in our own local community. In all these ways, we "prefer" some people to others. Thomas Aquinas calls this "the order of love," and he sees it as necessary for human life together.

What we need to do here—and again, we'll use our reason to do this—is identify the distinctions between where such preferences seem justified

(and even necessary) and when they cross the line into being unfair. Take the question of a friend or family member being hired for a job. Should you “prefer” him or her? I don’t think that’s an easy question. My guess is you would seek to make further distinctions. If your friend was simply not qualified to do the job, and you hired her anyway, that might seem bad; on the other hand, if she is a strong, qualified candidate, it might seem unfair to not hire your friend—cold and heartless! Doing nice things for people you run across in your neighborhood—we call them “favors”—seems like a very good thing. But should you do this little extra only for some neighbors? for all? I live on a small, tight-knit city block of row houses with a Facebook group, where people routinely request favors of neighbors. What is a reasonable, fair request? What’s too much to ask? What’s taking advantage?

So, since I now seem to be saying it’s quite right and good to show preferences, why do I label this a temptation? The complexity of the “hiring the friend” example helps start us thinking about where the limits are here. But there are a couple more important problems. First, historically, groups have identified “our people” in frankly unfair ways—most obviously to us in the United States, based on a person’s skin color or gender. This kind of exclusion is usually what we mean by “discrimination,” when we mean to call it unfair. It’s not just that we discriminate in preferring some people to others, but we prefer *for bad reasons*. What reasons? Much of the debate about justice issues lies right here.

A second problem—which kind of encompasses the first—is that it’s clear that not everyone is equal in terms of being a part of some group in the first place. For example, some people are born with better connections; some people develop better friendships. Perhaps most importantly, we are all part of a family, and people start out radically unequal due to family circumstances. For some part of human history, societies often were structured based on the view that your family was your destiny. There is a reason why visions of perfect societies, like Plato’s *Republic*, think a truly just society must abolish the family and raise children in standardized environments! No doubt one of the powerful contributions of Christianity (as it combined with the philosophy of Stoicism) is the development of a different idea, that all humans are part of a single family, the idea of “the unity of the human race.” And no doubt one of the most powerful founding ideas of America was a complete rejection of *inherited* titles and social hierarchies based on family origins. At least in theory, family lineage was not supposed to matter. As Robert Putnam explains it, Americans may be accepting of unequal outcomes (not everyone can win the race), but

they really dislike unequal opportunity.¹⁰ And in a world where “prefering” family, friends, and neighbors is an inevitable part of the life, we have developed the idea that it is only fair to watch out for those who are deprived of these connections—the “widows and orphans” of the Bible. In today’s society, those we should attend to might be persons who are socially awkward, struggle with disabilities, or are simply strangers in a new place. We believe we should attend to those who may be vulnerable, marginalized, or neglected.

Conclusion: Toward Restorative Justice

This last idea—helping the vulnerable, marginalized, or neglected—forms an important bridge to the question of restorative justice, since among these are those in our society who have been imprisoned. In a sense our thoroughly and narrowly punitive approach to punishment leads to the extreme marginalization of persons in prison and after imprisonment. Prison intentionally cuts off prisoners from relations—with family, friends, and neighbors in one’s community. Prisoners’ criminal records follow them for the rest of their lives, defining them as outcasts in terms of their employment possibilities and voting rights. The permanent stigma of “convicted felon” defines prisoners for the rest of their lives. Is such marginalization fair?

The distinctive problem of restorative justice is what to do in response to an injustice that has occurred. Our first instinct is probably to fix it, to “make it right.” But we should notice two problems that often get in the way. One, the injustice fundamentally affects relationships *between people* (even when it is just about things—like theft), and “fixing” these relationships involves more than just simple exchanges. Two, often (arguably, always) there isn’t really the possibility of simply “restoring” the situation to its prior state—something has happened, time has passed, fractures and losses cannot be undone. In other words, one problem is that we can become narrowly focused on simple exchanges—*settling a score* between offender and victim—and lose the awareness that wrongdoing affects relationships *among people* on multiple levels in wide-ranging ways. The second problem is that we can become preoccupied solely with *an isolated act of wrong* that was done in the past. The wrongdoer has done an unjust

¹⁰ *Our Kids: The American Dream in Crisis* (New York: Simon and Schuster, 2015).

act that can never be undone, and so our attention focuses narrowly on retaliating against the offender to right the wrong.

Restorative justice does not focus on exchanges that even scores and ways of paying back offenders. It does focus, primarily, on restoring the victim to wholeness and community. When possible, it focuses on ways that an offender can take responsibility to restore those he or she has harmed. Restorative justice broadly and deeply considers the issues raised in this chapter—how we should treat persons justly in ways that they deserve and how we should respond justly when someone has done something unjust. It also considers the linkage between these two issues and calls us to be attentive to both our responsibilities in treating persons justly and responding justly when persons fail to treat others justly. This book will draw you into a consideration of how restorative justice approaches these issues. Hopefully the considerations of this first chapter on justice have provided a general guide that will keep that consideration careful and thoughtful.

Review and Looking Forward

Editors

Justice is the virtue through which we sustain complex sets of relationship. Justice is giving others what they deserve, and judgments about what we owe to others and what is deserved depend upon our understanding of a person's place, standing, role, and relationships. As David Cloutier has explained, an individual "human being" is a place and standing in relationship to humanity, to creation, and to God (as God's image and likeness). Parent, child, neighbor, friend, boss, employee, legislator, citizen, and alien are all roles and relationships that also form the groundwork for the determination of what we and others need and deserve. In the Catholic tradition, this general definition includes sets of social relations.¹¹ Distributive justice is how those responsible for the whole (leaders and caretakers) allocate goods, services, and "what is deserved" to individual citizens, and social justice is how individuals contribute to the good of the whole. Commutative justice is how individuals relate to each other through contracts, commerce, and various sorts of interpersonal exchange. These three sets of relations are not easily disentangled, especially in a

¹¹ This account of justice is based on a classic in Catholic intellectual tradition, Josef Pieper, *The Four Cardinal Virtues* (New York: Pantheon Books, 1954), 43–113.

democratic republic like the United States. And this interweaving is a good thing; our acts of justice are deeply interconnected, as we are human beings, living in relation to others, God, and creation.

Restorative justice draws on this interconnectedness. (As you will see in chapters 5 and 6, it is the biblical model of justice.) Criminal justice, in its standard framework, is the preview of government; it is the manner by which fault, correction, and penalties are distributed—meted out—to citizens. Through retributive justice, the government takes revenge out of the hands of individuals. Indeed, retributive justice is not vengeance at all; in an impersonal fashion, a representative authority imposes a punishment—a measure of suffering—that is proportionate to the crime. Sometimes there is an attempt to combine retributive punishment with a reform and education of the offender; that is, there is an attempt at the rehabilitation of the criminal. Often, there is an attempt to shape retribution so that it is also a deterrent to would-be criminals. In comparison to restorative justice, an interesting thing about these forms of criminal justice is that they are interactions between an impersonal authority and an offender. The victims and their restoration are not in the picture at all.

Restorative justice begins with a focus on the ones who are harmed—first the particular victims, then the community, and finally offenders (who certainly harm themselves by harming others). While retributive justice is an exchange between a criminal and government (on behalf of a victim), restorative justice draws on the whole web of social relations. In addition to the concerns of governments, communities attend to the needs of victims and the fractures that crimes against individuals have created in the community itself. Restorative justice seeks the reform of criminals through their active and voluntary acceptance of responsibility for the injuries that they have caused. In other words, restorative justice includes both person-to-person exchange (commutative justice) and a call to the offender to contribute to the good of society as a whole (social justice). Because it is set deeply within a web of social relationships, restorative justice—you will discover throughout this book—is experienced as uplifting and healing for victims and communities, and it has great success in restoring offenders to community and setting them on a good path.

Questions for Discussion

1. A classic account of the social and individual responsibilities of justice are outlined in Pope John XXIII's encyclical *Pacem in Terris* (1963). The first section of the document (nos. 8–45) is titled

“The Order between Men.” The section is not lengthy, and it is worth a look on the Vatican website.¹² The section begins with this proposition:

[E]ach individual man is truly a person. His is a nature, that is, endowed with intelligence and free will. As such he has rights and duties, which together flow as a direct consequence from his nature. These rights and duties are universal and inviolable, and therefore altogether inalienable. (9)

From this principle, St. John XXIII outlines basic rights from “the means necessary for the proper development of life” (e.g., food, clothing, shelter) through the right of conscience and religious liberty to the “right to take an active part in public life, and to make his own contribution to the common welfare” (11, 26). These rights are accompanied by corresponding duties. “For example, the right to live involves the duty to preserve one’s life; the right to a decent standard of living, the duty to live in a becoming fashion; the right to be free to seek out the truth, the duty to devote oneself to an ever deeper and wider search for it” (29).

Take a look at this first section of *Pacem in Terris* and consider the roles and relationships that set the context for justice and judgment about what we owe to one another.

2. Start with the point that sets of roles and relationships guide us in determinations of justice. From this point, consider various relationships at home, in town, and at work. How do these relationships and roles help us to determine what a person deserves from us? Consider our own children, neighborhood children, kids we coach; consider a boss or employee, priest or minister, mayor or citizen. What are the responsibilities of each of these individuals, given their role and place? Given who we are (our role and place), what do we owe to them? What do we owe to someone new in town—a stranger (a person we only know as “human being”)? After you have gone through this exercise, imagine that each person has committed a crime. What do you want for each of them? What does each deserve?

¹² *Pacem in Terris* (Vatican City: Libreria Editrice Vaticana, 1963), http://w2.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html.