



## RESTORATIVE JUSTICE AND CATHOLIC SOCIAL THOUGHT: CHALLENGES AS OPPORTUNITIES FOR SOCIETY, CHURCH, AND ACADEMY

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### [1] INTRODUCTION

Good afternoon. Let me begin by expressing my gratitude to Julia Dowd, Michael Duffy, and the staff and benefactors of the Lane Center. Indeed, let me express my gratitude to all of you – the broader University of San Francisco community. It is a privilege to be here with you this afternoon to speak about the restorative justice movement and Catholic social thought.

By way of overview, I will begin with an introductory theological reflection on our theme of restoration and healing. I will then survey the restorative justice alternative to the problem of crime and violence; address connections between themes in restorative justice and Catholic social thought; and conclude with some reflections on how the *challenges* of restorative justice are, as well, *opportunities* for society, church, and academy.

I would like to begin with an image that is, to my mind, one of the best depictions of restorative justice from the broad New Testament imagination. And that is Luke's account of Jesus' pardon of the sinful woman from Luke 7: 36-50:



Credit: illustration by Julius Schnoor von Carolsfeld, scanned by Publications for Latin America (WELS), World Missions Collection Clip Art, Vol. 1, Pt. C, available at <http://www.wels.net/wmc/Downloads/189.gif> (last accessed February 27, 2008).

A Pharisee invited [Jesus] to dine with him, and he entered the Pharisee's house and reclined at table. Now there was a sinful woman in the city who learned that he was at

table in the house of the Pharisee. Bringing an alabaster flask of ointment, she stood behind him at his feet weeping and began to bathe his feet with her tears. Then she wiped them with her hair, kissed them, and anointed them with the ointment. When the Pharisee who had invited him saw this he said to himself, “If this man were a prophet, he would know who and what sort of woman this is who is touching him, that she is a sinner.” Jesus said to him in reply, “Simon, I have something to say to you.” “Tell me, teacher,” he said. “Two people were in debt to a certain creditor; one owed five hundred days’ wages and the other owed fifty. Since they were unable to repay the debt, he forgave it for both. Which of them will love him more?” Simon said in reply, “The one, I suppose, whose larger debt was forgiven.” He said to him, “You have judged rightly.” Then he turned to the woman and said to Simon, “Do you see this woman? When I entered your house, you did not give me water for my feet, but she has bathed them with her tears and wiped them with her hair. You did not give me a kiss, but she has not ceased kissing my feet since the time I entered. You did not anoint my head with oil, but she anointed my feet with ointment. So I tell you, her many sins have been forgiven; hence, she has shown great love. But the one to whom little is forgiven, loves little.” He said to her, “Your sins are forgiven.” The others at table said to themselves, “Who is this who even forgives sins?” But he said to the woman, “Your faith has saved you; go in peace.”<sup>1</sup>

Now, please indulge me, I’ve always regretted that the woman is nameless, and so about seven years ago I began calling her Cynthia. In any case, I propose Jesus’ pardon of Cynthia as a frame for our conversation because this Gospel episode centers on Cynthia’s *restoration* to God, to her community, and indeed to her very self ... through a *justice* of Jesus that is relational, that knows and sees Cynthia’s root dignity and faith.

In particular, I want to distill two images, and two consequent lessons, from this scene. The first image is Jesus’ passionate interrogation of Simon: “then [Jesus] turned to the woman [thus seeing her] *and said to Simon*, ‘do you see this woman?’” Obviously, no, Simon did not, or could not, or would not *see* this offender whom Jesus *saw*, and proclaimed restored to the community. Lesson one: a Christian vision of justice for those who commit wrongs requires that we *see* – that we look upon – others *first as persons* (who have committed offenses), as persons *with whom we have a mutual relational claim*. That we *not*, that is, look at them simply as objects, as ‘offenders’ – thereby, rather, *overlooking* them. Just as we look inside our own hearts during the penitential rite of every liturgy, to see and offer up our own offenses, so too our ecclesial duty is to *see* the root dignity and personhood of every *other* offender in our midst.

The second image is Jesus’ ‘adjudication’ of Cynthia, if you will: “so I tell you, her many sins have been forgiven; *hence*, she has shown great love’ ... [and Jesus] said to her, ‘your sins are forgiven ... your faith has saved you; go in peace.’” The logical construction of Jesus’ adjudication is worth paying attention to: her many sins have been forgiven, *hence* she has shown great love, *hence* she is saved by her faith and returned to her community, sent forth in peace. Thus, lesson two: our duty, indeed our very ability, to fulfill the Greatest Commandment – the love commandment (cf. Matthew 22:34-40; Mark 12:28-34; Luke 10:25-28; John 13:34), *stems from* our being restored, and our restoration of others, to social and ecclesial communion.

Combine the lessons: the Christian vision of justice *is restorative*, and requires that we first see – and search for if we don’t see – the root dignity of every person who has offended

through crime or violence. This ‘seeing of the offender’ as a Christian responsibility finds support elsewhere in the Gospels – the Prodigal Son (Luke 15:11-32), the Woman at the Well (John 4:1-42), Jesus’ pardon of ‘the good thief’ at his crucifixion (Luke 23:39-43). But we see it especially in Matthew 25: “for I was ... in prison and you visited me” (Mt 25: 35, 36).

Now, Matthew’s image of Jesus as prisoner – and the prisoner as Jesus – offers a fitting segue to the main focus of my reflections this afternoon, since of course prison is the context where many an offender in our society ends up. So, along the way, PowerPoint slides will quote brief reflections from inmates at San Quentin Prison who are a part of our interfaith restorative justice roundtable there, as well as from crime victims who have engaged restorative justice as a means for their own healing. As Matthew’s Gospel envisions us visiting Jesus in prison, so will Jesus visit us through the words of those in prison who strive to incarnate restorative justice into their own lives, and through those who have embraced Jesus’ challenge to forgive one’s enemies.

#### ***On Healing and Restoration***

Restorative justice tries “to bring healing and restoration to **everyone** impacted by any form of crime, especially victims. I have been thinking of ways to try and bring some healing after all the destruction I have brought on society. Through prayer, I was led to create the Restorative Justice Roundtable” at San Quentin.  
**Leonard**

## **[2] THE RESTORATIVE JUSTICE ALTERNATIVE TO THE PROBLEM OF CRIME AND VIOLENCE**

Turning now to the problem of crime and violence, and the restorative justice alternative. Today’s newspaper highlights a study from the Pew Center announcing that our incarceration rate has reached 1 of 100 adults in the United States.<sup>2</sup> To many, such vast incarceration reflects innumerable individuals’ moral ills, but also social injustices. This indeed is the position of the United States Catholic Bishops in a remarkable document published in November 2000 entitled *Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice*.<sup>3</sup> I will return to that document throughout my presentation. In any case, both restorative justice and Catholic social thought would appear to agree that our society witnesses too much incarceration, and too little healing of victims, of offenders, and of social consciousness. Consider the following statistics:

- As of December 31, 2006, the most recent date for which the U.S. Department of Justice has published figures, there were over 2.2 million federal and state prison inmates.<sup>4</sup> When we add in probation and parole, the total number of citizens under the supervision of corrections departments reaches 7.2 million nationwide: a 290% increase since 1980, and a *sixfold* increase since 1970.<sup>5</sup>
- Our nation’s incarceration rate – in 2006, 751 inmates per 100,000 population – is the highest reported rate in the world.<sup>6</sup> The U.S. has 5% of the world’s population, and 22% of the world’s prisoners.<sup>7</sup>
- From a family and social justice perspective, consider the following: compared to the national 2.9% increase in incarceration from 2005 to 2006, the number of women under corrections authorities’ jurisdiction rose 4.5% in that period.<sup>8</sup> More and more, incarceration is a family affair, and consider the staggering impact on families when, now, *both* mothers and fathers are missing from their families and communities.
- Particularly alarming are the racial disparities attendant to incarceration in the U.S.:<sup>9</sup>

- [1] At the end of 2006, 3,042 per 100,000 black males were sentenced prisoners, compared to 1,261 per 100,000 Hispanic males and 487 per 100,000 white males.<sup>10</sup> That means a black male has a 32% chance of serving time in prison during his life, a Hispanic male a 17% chance, a white male a 6% chance.<sup>11</sup>
- [2] One analyst calculated that the ratio of incarcerated men per 100,000 black males in the U.S. in 2004 was over five times the ratio of incarcerated men per 100,000 black males in apartheid South Africa some eleven years earlier.<sup>12</sup>
- [3] Racism is particularly prevalent with respect to the death penalty: of those executed since 1976, 35% have been black, yet African-Americans are about 12% of the U.S. population.<sup>13</sup> Notably, about 80% of murder victims in cases resulting in execution were white, while only 50% of murder victims overall are white.<sup>14</sup>

**“One Sunday morning**, a few weeks [after visiting San Quentin’s “Katargeo” program], sitting in church, I’ll hear another version of the instructions I received before going to San Quentin: “Carry no purse, no bag, no sandals,” Jesus tells his disciples after warning them, “See, I am sending you out like lambs into the midst of wolves” (Luke 10: 3-4). Wasn’t that the expectation? I would bring something to the men of Katargeo; I was the innocent storyteller going into the den of wild animals. As Jack told me over the phone, the evening before my visit, “You have a lot to say to the guys. They’ll really value hearing your story.” What I couldn’t predict - although the part of me that wrote Of course! right away seemed to - was that they would give something to me. Katargeo hasn’t just loosened what binds each of its members. It’s unbound me, too. I think of what Blake told me the night he called me sobbing from jail, of what he told me over pot stickers and sushi. I think of what has terrorized me during my own bouts with despair, what scares me still. Being alone. Not independent or solitary or on one’s own. But existentially, supremely, uncompromisingly alone. The human condition, sure, but also the flip side of something equally human, ultimately freeing and supremely stronger than any barrier that separates us: the need to connect.”

**Lindsey Crittenden**, whose brother was murdered, published an account of a recent visit to San Quentin.

**Lindsey Crittenden, “Hearing From the Inside: A Personal Trip to One of San Quentin’s In-House Rehabilitation Programs,”**

*San Francisco Chronicle*, Feb. 17, 2008, available at: <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/02/17/CMFCUBCES.DTL>

Now, an obvious question or retort in response to this raft of statistics would ask whether our high rate of incarceration is an unfortunate but necessary response to the plague of crime. Statistics suggest, rather strongly, this is not the case. Consider:

- [1] While the U.S. leads the world in its incarceration rate, our rate of crime victimization equals the rate of crime victimization among 17 of our peer industrialized nations.<sup>15</sup> Research demonstrates little or even no correlation between crime and incarceration rates: for example, North and South Dakota, with virtually identical demographic characteristics, have had consistently similar crime rates for decades, and yet South Dakota incarcerates at a rate more than twice that of North Dakota.<sup>16</sup>
- [2] Public perception of crime, and actual crime, simply do not match. While there is a widespread reported sense that crime remains as much if not more pernicious than in the

past, violent crime was relatively stable from 1970-1994, after which it declined significantly.<sup>17</sup>

- [3] Furthermore, 82% of those sentenced in 2004 to state prison were convicted of non-violent offenses; and beginning in the early 1980s and continuing over the course of 20 years, those in prison for drug offenses rose from 1 in 10 to 1 in 4, so that over half of today's federal inmates are incarcerated for drug offenses.<sup>18</sup> This is not to say that drugs are not a problem, but it begs the question whether incarceration is the answer.

The point of all of this? As one advocacy group concludes, in light of such statistics, "we can not incarcerate away the crime problem."<sup>19</sup> There must be some alternative.

And here we begin to examine, the restorative justice alternative. The renowned Mennonite restorative justice theorist and practitioner Howard Zehr offers a good working definition: "restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible."<sup>20</sup> Zehr's definition already hints at an important aspect of restorative justice: theory and application are interwoven. Restorative justice is, in this sense, fundamentally a praxis – a dialectic of thought and action<sup>21</sup> – as are key of tenets Catholic social thought such as subsidiarity, solidarity, preferential option for the poor.<sup>22</sup>

#### ***The Restorative Justice Alternative***

"Restorative justice is the opposite of 'retributive justice.' The former seeks to make things right. The latter seeks punishment only. Restorative justice is a process of responsibility, forgiveness, and reconciliation between parties."

***Bob***

Thus, from the outset it is important to note that restorative justice is a *process approach* to dealing with crime and violence. Restorative justice ultimately is meant to be lived out, to be *incarnated*, as we would say in a Christian context, in the real-world praxis of criminal justice, and peacemaking in general. My aim here is thus to compare the restorative justice model with the traditional criminal justice model – that system that is responsible for the move to mass incarceration I outlined minutes ago. Restorative justice is not limited to any one particular definition or practice. It is rather a set of principles intended to make amends, insofar as possible, after some violent event or other crime.<sup>23</sup> So, I will outline four guiding principles of restorative justice as I have synthesized them from the broad literature.<sup>24</sup>

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***Howard Zehr***,  
restorative justice theorist and practitioner

#### ***Four Guiding Principles of Restorative Justice***

- (1) Relationships precede rules
- (2) Justice by participation rather than by proxy
- (3) Restoration of wounded communities, not just adjudication of offending individuals
- (4) The restorative justice continuum: from order, to rehabilitation, to shalom

**[1] Relationships precede rules.** At present, our criminal justice model entails six components: [1] crime is *lawbreaking*, a breaking of rules; [2] when such a rule is broken, justice entails assigning and establishing *guilt* ... [3] “so that *just desserts* can be meted out” ... [4] by imposing punishment, by “inflicting *pain*”; [5] and all of this occurs, procedurally through yet more *conflict*<sup>25</sup> – namely in the form of the adversarial process of American common law jurisprudence. [6] Sixth, and this is an important point, in the traditional system of criminal law the offense of crime is formalized in terms of an offense against the state; even when the victim is very clearly a discrete other party, in formal terms the offender’s offeree is the state, against which he must defend himself.<sup>26</sup> Crime victims, then, occupy this rather strange position outside the adjudicatory process, even though, typically, it is they who have suffered the greatest felt harm. In brief: the traditional criminal justice system formalizes criminal offense in terms of an offender’s violation of the positive law laid down by the state, which in turn requires state action to deter future offense (by that offender and by others), and to punish the offender, remove him from society (for a time), and (at least ideally) rehabilitate his offending behavior. On the other hand, restorative justice comprehends crime as more than rulebreaking, and much more as a violation or rupture of relationships that requires repair: relationships of offenders and victims and their families and communities and, as well, the community as a whole. First and foremost, crime ruptures relationships, and justice entails repairing them insofar as possible.

“As a living example of the current punitive system starting as a ward of the court at age 13 and after decades of incarceration, I see the desperate need for fundamental change in the way our society and communities deal with young people who commit crimes, and the ripple effect in the lives of the people who are directly affected by their actions.” Through restorative justice, “hearts are touched and human faces are put in place of handcuffs. In some cases, people can heal and become communities that look out for each other and work together toward positive change.”

*Skip*

**[2] Justice by participation rather than by proxy.** The traditional criminal justice regime adjudicates by proxy. An example: David assaults Peter, and upon arrest and indictment is represented by public defender Donna at a trial featuring prosecutor Paula and presided over by Judge Jane. Aside, perhaps, from being called as witnesses to what involved them in the first place, the original parties are rather passive and the prosecutor takes over in the name of the offended state. Now, there are good reasons for this process, a careful consideration of which would take us too far afield of our purposes today. Still, a basic, common sense critical review is possible. Think of it this way: you Pat are a parent and your child Charlie hits your neighbor Nancy’s son Sam, and takes Sam’s toy. Basic human justice in this situation – probably across many if not most cultures – would involve the parents, Pat and Nancy, sitting down with the kids, Charlie and Sam, talking through the dispute, getting an apology from Charlie and an acceptance from Sam, and securing some kind of restitution from Charlie to Sam. In this hypothetical, a real injury has occurred – not simply to property and person, but to the relationship between the kids and, if it escalates, between their families. But the response, and the process used to address the dispute, is a process of participation, not by proxies, but by the parties involved. From the first premise – that wrongs involve relationships as much as if not more than rules – restorative justice concludes that responding to wrongs must involve a process of participation, not proxy.

“A strong sense of spiritual strength ... is basic to the restorative justice moral concept. People can solve problems by growing through them, rather than by unending, adversarial processes.

[We] *solve* justice problems by joining a community force.”

**John**

“In addition to the unspeakable horror of the crimes committed against our daughter and our devastating grief and loss, nothing prepared us for dealing with the confusion, fear, and frustration of the criminal justice system. The cumulative effect of this experience almost destroyed us. ... We had no right[s] ... Everything [our surviving children] valued - faith in God, reliance on the judicial system, and trust in their fellow man - was severely tested.”

***Mother who suffered the trauma of her daughter's kidnap, rape, and murder, and who has become a crime victims advocate.***

Quoted from the U.S. Catholic Bishops document, *Responsibility, Rehabilitation, and Restoration*

**[3] Restoration of wounded communities, not just adjudication of offending individuals.** Building on the first premise of relationality and the second premise of participation, the third principle emphasizes the broader community's role in all of this. Again, beneath the offense of any given crime, are the wounds that are inflicted, the relationships that are ruptured. Beyond the necessary adjudication of an individual offender, restorative justice aims at addressing the deeper wounds and, insofar as possible, restoring the balance to the relationships that have been ruptured. This restoration extends to the communities – the webs of relationships – impacted by a given offense. One noted theorist, John Braithwaite, uses the term “communities of interest” to describe the networks of individuals impacted by an offense.<sup>27</sup>

Restorative justice certainly attends to what must happen to – and often for – an offending individual and his offended victim. But restorative justice ultimately aims at a broader, holistic restoration to right relationship of all individuals and communities of interest connected to a given offense. Various models of restorative justice encompass this perspective: whether through victim-offender mediation, family group conferencing, healing circles, or other modalities, restorative justice in practice emphasizes encounter, reparative process, and transformation of offenders, survivors, and their respective communities.

“Most convicts never really understand the magnitude and impact of their crime on society or even on their own family. Restorative justice principles actually make it possible to make them realize the magnitude and impact of the pain they caused. It actually helps change them from within, which is the only way to obtain the lasting change we seek. For example, when viewing people in our society as working parts of a human body, under the current system locking people up for large amounts of time is like cutting off a broken arm and disposing of it. The arm is gone forever, and the body must function without an important limb. Under restorative justice, you heal the arm, which helps us to perform in a way that is most beneficial to the arm and the rest of the body.”

**Ali**

**[4] The restorative justice continuum: from order, to rehabilitation, to shalom.** At a basic level, the state's responsibility with respect to criminal justice is to maintain order. Two of the ‘big four’ classical purposes of the criminal justice system – namely, deterrence of crime and isolation of offending individuals from the community – instantiate this formal responsibility.<sup>28</sup> The third, punishment or retribution, acknowledges that, in the realm of criminal justice, the state has a responsibility to treat offenders in a manner that reflects the community's sense that the offenders' behavior violates the community's established sense of morality. The fourth, rehabilitation, speaks to a longstanding tradition, dating in this country to the 18<sup>th</sup> century when

the ‘penitentiary’ came about,<sup>29</sup> that with the exception of the most grievous offenses, neither punishment nor isolation of the offender from society are ends in themselves.

Rather, punishment and isolation are part and parcel of an incarceration that entails a broader program aimed at ‘treating’ an offender so that he may be rehabilitated.

Historically, we have seen in this country, and especially in this state, a give and take with respect to the extent to which rehabilitation should or even can be part of the criminal justice system’s responsibility. In California, for example, in the late 1970s the Legislature passed measures explicitly declaring that the Corrections Department’s mission was to isolate and punish, *not* to rehabilitate.<sup>30</sup> In 2005, Governor Schwarzenegger did rename the Corrections Department to add the word “Rehabilitation.” However, to what extent this renewed emphasis will take root remains to be seen.

In any case, traditional criminal justice aims, minimally at order, maximally at rehabilitation. Where restorative justice differs is in its conviction that communities ideally desire not simply order, not just the rehabilitation or treatment of its ill members, but a deeper and more constitutive peace – that is, a fundamental at-rightness and well-being of relationships that actually feeds relational growth. Biblically, this is the concept of shalom. Obviously while not all restorative justice theorists advance a biblical view, there is a common current in restorative justice theorizing that articulates the premise that restorative justice aims at more than ‘fixing’ the effects of an offense but, indeed, represents a transformative social vision.<sup>31</sup>

So we have four guiding principles of restorative justice: relationships precede rules; justice by participation rather than by proxy; restoration of wounded communities, not just adjudication of offending individuals; and the restorative justice continuum – from order, to rehabilitation, to shalom. Before moving on to a closer analysis of connections between restorative justice and Catholic social thought we need to address an obvious question: does any of this work in the real world? The answer is yes.<sup>32</sup> Consider the following:

*Anne*, participant in a Restorative Justice seminar held at San Quentin Prison:

“[During one of the small group session] one of the visitors sitting beside me looked around and said, ‘We don’t have a victim [representative]. We need to have a victim.’ Without even thinking about it, I told her very quietly, ‘I’m a victim.’ I didn’t intend the others to hear that, and I wasn’t prepared to even disclose it, let alone share more with the group at large. I just wanted to be truthful, as I had been required to be truthful in a jury selection process several years before when I had to acknowledge that I had been the victim of a violent crime. The whole day at San Quentin had been devoted to truth, and it was in the spirit of the day that I disclosed [that I was a victim of a violent crime 33 years ago] ... I was finally feeling what had happened to me that night so long ago. It was my own private restorative justice moment, or at least a beginning.”

Restorative justice is about “the desire to give back to victims. That can happen in a number of ways: (1) allowing the victim to express how we hurt them; (2) pay into a fund for their usage; (3) set up a place for the victim to go and get help ... Healing can only be done jointly, both mentally and spiritually.”

*Shahid*

“Men in here have changed their lives and want to make amends to the families they hurt. I can give back to my survivors and my community.”

*Demetrius*

**[1] Internationally:** Perhaps one of the most significant international examples of restorative justice at work would be the truth and reconciliation commissions of South Africa and other nations.<sup>33</sup> But even for ordinary justice, many countries have begun to adopt restorative



practices – with New Zealand perhaps the most-cited. In the 1980s New Zealand – a country with very similar crime demographics as the U.S.<sup>34</sup> – embarked on a reform of its criminal justice system.<sup>35</sup> Eventually it switched from a top-down to a grassroots model for that reform, incorporated ancient justice practices of its indigenous Maori population, and then amended its constitution to mandate Maori-inspired restorative justice practices as the norm for its juvenile justice system. Ninety percent of cases following this model yield a consensus decision, which in most all cases is then formally ratified by a judge. Not only have New Zealand’s recidivism rates for juvenile offenders plummeted, but the offense rate as a whole has dropped significantly.<sup>36</sup> The system is based on what has become one of the dominant methodologies of the restorative justice movement, the family group conference. Family group conferences bring in a wide circle of people connected with both an offender and a victim, to collaboratively devise a resolution to the offense at issue.<sup>37</sup> Looking at models across jurisdictions and cultures, the ‘resolution’ that restorative justice methodologies yield depends on the crime and the context, but may involve any one or a combination of: a formal apology, restitution, community service, substance abuse treatment or other counseling, or, as necessary, incarceration.<sup>38</sup>

**[2] Domestically:** restorative justice-oriented programs have been successfully implemented for both nonviolent and violent juvenile and adult proceedings in a number of jurisdictions in Alaska, Minnesota, and elsewhere.<sup>39</sup> And right here in our own back yard, for the past eleven years the San Francisco Sheriff’s Department has successfully implemented RSVP – *Resolve to Stop the Violence Program*. In its first year alone – and the success has continued, even amidst funding cuts – RSVP 8-week program participants had a recidivism rate 46% lower than non-participants; 12-week program participants had a recidivism rate 53% lower than non-participants; and 16-week program participants had a recidivism rate just shy of 83% lower than non-participants.<sup>40</sup> It costs California \$35,000 to jail an inmate for one year; RSVP costs just \$7 a day.<sup>41</sup>

### **[3] CONNECTIONS BETWEEN RESTORATIVE JUSTICE AND CATHOLIC SOCIAL THOUGHT**

We now turn to the connections between principles of restorative justice, and of Catholic social thought. I’ll begin with a simple “top ten” tenets of Catholic social thought, reprinted on your handouts. The following schematic is my own, though it borrows from the work of others. Those familiar with Catholic social thought should be able to recognize the usual buzz words.<sup>42</sup>

| <b>“Top Ten” Tenets of Catholic Social Thought</b>  |  |
|---|--|
| [1] human dignity and respect for human life  | [6] the balancing of rights and responsibilities                       |
| [2] the link between the religious and social dimensions of life                              | [7] solidarity and the preferential option for the poor and vulnerable |
| [3] the link between love – <i>caritas</i> – and justice                                      | [8] stewardship and promotion of the common good                       |
| [4] social and economic justice, with justice as “fidelity to the demands of a relationship”* | [9] the value of association and subsidiarity                          |
| [5] the value of and right to equality and to political participation                         | [10] promotion of peace and liberation from structural sin             |
| * this phrase is from John Donahue, S.J.; see note 52   |  |

Now, let me begin the restorative justice-Catholic social thought comparison with a three-word quote from Howard Zehr, the restorative justice theorist and practitioner whose restorative justice definition I quoted earlier: “Violations create obligations.”<sup>43</sup> One of the

fundamental ethical premises of Catholic social thought is that rights and responsibilities co-exist in a dialectical relationship.<sup>44</sup> The restorative justice principle, then, that violations of others' rights implicates an obligation or responsibility to restore what has become unbalanced, fits in well with one of the first principles of the Catholic ethical tradition. But as should be clear from the Scriptural exegesis with which we began, and the study of restorative justice that we have just completed, *both* restorative justice and the biblical tradition that serves as a basis for Catholic social thought are concerned to read such principles *in light of a primary concern for healing persons and relationships*. The principles only make sense as abstract expressions, if they are rooted in the more fundamental, the more radical – that is 'root' – value of honoring and redeeming human life, human relationality, and human dignity.

As a way then of schematizing the nexus between restorative justice and Catholic social thought, I propose four groupings of Catholic social thought's traditional tenets, that parallel the four broad restorative justice themes I outlined earlier.

| RESTORATIVE JUSTICE THEMES   | ← NEXUS →                                   | CATHOLIC SOCIAL THOUGHT THEMES  |
|--|---|---|
| [1] Relationships precede rules  | <b>First Nexus: Foundations</b>             | [1] Anthropology of incarnation and covenant: <ul style="list-style-type: none"> <li>• (1) <i>human dignity and respect for human life</i></li> <li>• (2) <i>the link of the religious and social dimensions of life</i></li> </ul>   |
| [2] Justice by participation rather than by proxy                                      | <b>Second Nexus: Justice Orientation</b>    | [2] Justice as fidelity to the demands of a relationship: <ul style="list-style-type: none"> <li>• (3) <i>the link between love – caritas – and justice</i></li> <li>• (6) <i>the balancing of rights and responsibilities</i></li> <li>• (9) <i>the value of association and subsidiarity</i></li> </ul>   |
| [3] Restoration of wounded communities, not just adjudication of offending individuals | <b>Third Nexus: Restorative Orientation</b> | [3] Covenantal social ethics linking the religious and social: <ul style="list-style-type: none"> <li>• (2) <i>the link of the religious and social dimensions of life</i></li> <li>• (4) <i>social and economic justice, with justice as "fidelity to the demands of a relationship"</i></li> <li>• (5) <i>the value of and right to equality and to political participation</i></li> <li>• (6) <i>the balancing of rights and responsibilities</i></li> <li>• (7) <i>solidarity and the preferential option for the poor and vulnerable</i></li> <li>• (8) <i>stewardship and promotion of the common good</i></li> <li>• (9) <i>the value of association and subsidiarity</i></li> </ul> |
| [4] The restorative justice continuum: from order, to rehabilitation, to shalom        | <b>Fourth Nexus: Restorative Vision</b>     | [4] The integrative Gospel vision: peace and liberation: <ul style="list-style-type: none"> <li>• (7) <i>solidarity and the preferential option for the poor and vulnerable</i></li> <li>• (10) <i>promotion of peace and liberation from structural sin</i></li> </ul>   |

**[3.1] First nexus – foundations:** relationships precede rules / anthropology of incarnation and covenant

The first nexus, foundations, compares Catholic theological anthropology with the first thematic category of restorative justice, ‘relationships precede rules.’ As noted, restorative justice presumes that human relationality is our starting point, and that when offenses or crimes occur, they are an upsetting of a relational order that then requires restoration or balancing. As I hope is clear, this is not all that far off the mark from Judeo-Christian creation theology and theological anthropology – itself a starting point for Catholic social thought.

“I came to participate in the [restorative justice] program by attending Mass at the chapel here at San Quentin. It’s what our Catholic background teaches us - to forgive, and to help others in need to get more involved in our communities.”

**Eddie**

For Catholic social thought begins with the fundamental dignity of the human person, created *in imago Dei*, as a free, responsible, hopeful, and social-relational being.<sup>45</sup> Both the Old and New Testaments present an anthropology that conceives of the human person as relational – as regards God and as regards others – in terms of covenant. The story of creation, sin, grace, and redemption is one of relationship and of covenant which, when broken, calls for healing and restoration.<sup>46</sup> There *are* key law texts in Scripture: in the Old Testament, the Decalogue (Exodus 20:1-17; Deuteronomy 5:6-21), the Exodus Covenant code (Exodus 20:22—23:33), the Holiness Code in Leviticus (Lev 17—26), and the Deuteronomic code (Dt 12—26). These law texts devote particular attention to the community’s responsibility to the poor, the widow, the orphan, and the outcast. And in the New Testament of course we have the Beatitudes (Matthew 5:3-12; Luke 6:20-22), the Greatest Commandment (Matthew 22:34-40; Mark 12:28-34; Luke 10:25-28; John 13:34) and Jesus’ startling commandment to love one’s enemies (Matthew 5:43-48; Luke 6:27-36).<sup>47</sup> But all of these law texts *spring from* and are rationalized by the fundamental anthropology of the human person created *in imago Dei* and destined for covenanted relationship with God and with others. Beyond these Scriptural law texts, is the Catholic embrace of natural law as the foundation for ethical praxis – the premise being that *as human*, as created *in imago Dei*, humans possess an intellectual capacity to perceive the fundamental norms of moral life.<sup>48</sup> But a key aspect of the natural law is its intended purpose: helping the person, to intuit and apply moral truths communicated via relationship with God, into the rest of human relationships.<sup>49</sup>

So in terms of foundations, whether biblical or philosophical, the resonance between anthropological themes in Catholic social thought, and restorative justice’s emphasis on human relationality preceding rules should be clear. As the U.S. bishops’ document *Responsibility, Rehabilitation, and Restoration* states, “our society seems to prefer punishment to rehabilitation and retribution to restoration, thereby indicating a failure to recognize prisoners as human beings.”<sup>50</sup> The restorative justice movement is founded on a human relationality premised on respect for others’ lives, rights, and cultural meanings. Catholic social thought rests on a foundational anthropology premised on human dignity and respect for human life, and on the link of the religious and social dimensions of life.<sup>51</sup>

“In some ways, an approach to criminal justice that is inspired by a Catholic vision is a paradox. We cannot and will not tolerate behavior that threatens lives and violates the rights of others. We believe in responsibility, accountability, and legitimate punishment. Those who harm others or damage property must be held accountable for the hurt they have caused. The community has a right to establish and enforce laws to protect people and to advance the common good. At the same time, a Catholic approach does not give up on those who violate these laws. We believe that both victims and offenders are children of God. Despite their very different claims on society, their lives and dignity should be protected and respected. We seek justice, not vengeance.”

**U.S. Catholic Bishops,  
*Responsibility, Rehabilitation, and Restoration***

**[3.2] Second nexus – justice orientation:** justice by participation rather than by proxy / Justice as fidelity to the demands of a relationship

From any ethical foundation must spring praxis – lived practice informed by reflection on those foundations. And this is where the second nexus comes in: what *orientation* of justice appears in the respective movements – i.e., what orientation of concrete processes for righting the wrongs that occur in a given relational context? In terms of restorative justice, I outlined this in terms of a justice that is one of direct rather than proxy participation by stakeholders. Where the criminal justice system in our context turns the process of justice over to professionals – more or less exclusively – restorative justice aims at including those communities of interest that are affected by the rupture of a relationship.

“The spiritual challenges I see are getting the stakeholders to take part and do the work to find healing and prevent further pain and suffering ... [and] getting the public to realize that the ‘tough on crime’ policies only cause society more troubles. We have to work to prevent crime and assist those impacted by crime. Revenge justice does not serve anyone in the long term.”

**Leonard**

I would suggest that restorative justice’s orientation of participation rather than proxy has a close analogue in Catholic social thought’s conception of justice as fidelity to the demands of relationship. This definition comes from Fr. John R. Donahue, S.J.’s work on the biblical foundations of justice as developed by Catholic social teaching.<sup>52</sup> I have explored in other areas of my own research how his definition also resonates with the Catholic philosophical tradition, and particularly with Catholic social thought’s core concept of solidarity as “a learned habit, cultivated over time, that sees ‘the other’ as a neighbor called to share equally with us in the goods of creation and with and toward whom we have certain mutual obligations.”<sup>53</sup> Justice as fidelity to the demands of relationship also coheres well with the personalist philosophy that oriented the great social encyclicals of Pope John Paul II’s pontificate.<sup>54</sup> The core insight here – similar to that of restorative justice’s participation rather than proxy rule – is that true justice, true righting of wrongs that occur, always inheres in a social context of mutual obligations, in all the demands and joys and challenges that mutual obligation implies. The key question, though, centers on *who* is responsible for mediating that process of justice. The justice orientation of both restorative justice and Catholic social thought widens the circle of those who make justice happen, but also, in terms of a *restorative* focus, entails a thick concept of the relational demands of such a process. Each participating individual needs to be invested in the process, and allow her- or himself to be ‘confronted,’ to be ‘converted,’ by the expressed needs and experiences of ‘the other.’ And, indeed, most concrete restorative justice models place an emphasis on encounter of an offender – if not with the particular person he has offended, then with some vicarious representative.<sup>55</sup> Encounter facilitates restoration – the very phenomenon that I earlier suggested Jesus’ pardon of Cynthia depicts. Encounter facilitates restoration.<sup>56</sup>

This second restorative justice-Catholic social thought nexus fits in several of the “ten tenets” of Catholic social thought that I outlined earlier: the link between love and justice, the balancing of rights and responsibilities, and the value of association and subsidiarity. In brief, that is because Catholic social thought’s link of love and justice corresponds with restorative justice’s vision of restoration, not mere ‘correction’ or punishment upon offense. As the U.S. bishops’ document enunciates, “crime and corrections are at the intersection of rights and responsibilities” and the test of our social fabric “is whether we will exercise our responsibility to hold the offender accountable without violating his or her basic rights.”<sup>57</sup> But how does such responsibility occur? Here the principles of association and subsidiarity exhibit particular

resonance. Fr. William Byron, S.J. defines subsidiarity in terms that I believe are apt to the restorative justice vision of direct participation by stakeholders in a situation of offense. Fr. Byron writes: “the principle of subsidiarity puts a proper limit on government by insisting that no higher level of organization should perform any function that can be handled efficiently and effectively at a lower level of organization by human persons who, individually or in groups, are closer to the problems and closer to the ground.”<sup>58</sup> That might as well be a description of the restorative justice principle of justice by participation rather than by proxy. Notably, that kind of vision, of grassroots response by an immediate-level community to the harm done by crime or violence is not just the hope, but indeed the outcome, of restorative justice conferencing models.<sup>59</sup> Restorative justice practitioners Gordon Bazemore, Lori Ellis, Hennessey Hayes, and Mark Umbreit are among those who have documented these kinds of outcomes by comparing various restorative justice models and analyzing what types of methodologies are appropriate for assessing restorative justice outcomes.<sup>60</sup>

**[3.3] Third nexus – restorative orientation:** restoration of wounded communities, not just adjudication of offending individuals / covenantal social ethics linking the religious and social

“It will take an act of God Himself to begin real change ... Dialogue is possible ... [and] change begins one person at a time ... It would be far more prudent to educate and give a kid the tools to succeed, rather than incarcerate and perpetuate the cycle of offense ...  
Lawmakers, legal scholars, and all people need to think outside the box ...  
The biggest challenge is to break from the punitive model of justice.”

*Skip*

If a given justice orientation pertains to the specifics of addressing a given offense, this third area of nexus between restorative justice and Catholic social thought examines the broader social or community implications of a *restorative* approach, to justice. The Restorative Justice Online website offers a definition of restorative justice that emphasizes how I want to focus this aspect: “restorative justice is a *theory of justice* that emphasizes repairing the harm caused *or revealed by* criminal behaviour.”<sup>61</sup> Violence and criminality are as much – arguably, if not more – a *manifestation* of broader social ills, as they are the outcome of particular individuals’ choices.<sup>62</sup> As Catholic social teaching emphasizes, we need to challenge the broader culture of violence in which we live, and opt for a culture of life.<sup>63</sup> The core social relationships responsible for the justice orientation of the second nexus – namely, victims and survivors, their families and networks – inhere in a broader associational sphere of education, work, civic and religious associations, and so forth. These broader associational spheres, then, need both to contribute to restoring wounded relationships, but also to be attended to in their own right as a necessary, fertile ground for a broader restorative orientation to our social response to crime and violence. The third restorative justice theme – restoration of wounded communities, not just adjudication of offending individuals – recognizes this restorative social orientation.<sup>64</sup> Though this orientation is not explicitly spiritual in all restorative justice models, it is in many. And even in those that are not, there remains an implied reference, in terms of a restorative orientation, to values commonly associated with spirituality.<sup>65</sup>

Catholic social thought likewise recognizes a similar principle: one of a covenantal social ethics that links the religious and social dimensions of life.<sup>66</sup> If justice is fidelity to the demands of relationship, and our relationships themselves inhere in a broader social context, then a

restorative orientation to a Catholic perspective on crime and violence likewise and necessarily takes in a broader, covenantal social ethics. *Justice* – as fidelity to the demands of relationship, said relationships inhering in broader social context – justice thus touches not just on traditional moral questions of right and wrong, rights and responsibilities, but also on social and economic justice.<sup>67</sup> A covenantal social ethics also emphasizes human equality and political participation, association and subsidiarity, stewardship and promotion of the common good, as well as solidarity and the preferential option for the poor and vulnerable – all themes that lie at the root of Catholic social thought. Notably, these themes find explicit expression in the U.S. bishops’ *Responsibility, Rehabilitation, and Restoration*.<sup>68</sup> A Catholic-Christian response to crime and violence – again, imaged as I tried to suggest by the dynamics of Jesus’ pardon and restoration of Cynthia, ultimately boils down to solidarity. In his 1987 encyclical *Sollicitudo Rei Socialis* (On Social Concern), Pope John Paul II declared that solidarity recognizes that “we are all really responsible for all.”<sup>69</sup> As the restorative justice movement envisions a restorative-oriented response to crime and violence, so Catholic social thought premises a Catholic-Christian response to crime and violence on similar grounds. To quote from the U.S. bishops’ *Responsibility, Rehabilitation, and Restoration*:

Solidarity recognizes that “we are all really responsible for all.” [Citation to *Sollicitudo Rei Socialis* § 38.] Not only are we responsible for the safety and well-being of our family and our next-door neighbor, but Christian solidarity demands that we work for justice beyond our boundaries. Christians are asked to see Jesus in the face of everyone, including both victims and offenders. Through the lens of solidarity, those who commit crimes and are hurt by crime are not issues or problems; they are sisters and brothers, members of one human family. Solidarity calls us to insist on responsibility and seek alternatives that do not simply punish, but rehabilitate, heal, and restore.<sup>70</sup>

**[3.4] Fourth nexus – restorative vision:** the restorative justice continuum: from order, to rehabilitation, to shalom / the integrative Gospel vision: peace and liberation

In a restorative justice course at Berkeley Law School, a question to which we repeatedly return concerns the extent to which restorative justice is a *reformist* movement, meant to tinker with the machinery of the prevailing criminal justice system, or a *transformative* movement that bespeaks broader intentions for a reordering of social perceptions, institutions, and modes of living.<sup>71</sup> A review of restorative justice literature reveals adherents all over this question – though most suggest if not outright argue for a restorative justice vision as a broader vision for social transformation. And it is in that sense that I believe the fourth nexus – pertaining to restorative *vision* – asks of both restorative justice and Catholic social thought: what vision do you propose for a society marred by crime and violence?

“Both the Mass and the New Testament say that Jesus Christ lived and died that sins might be forgiven. If forgiveness was that important to Jesus, then surely it is not optional for Christians who seek to follow him. ... The benefits if forgiveness are simple but profound. When we forgive, our hearts are open to give and receive love with others and with God. ... We have more zest for living, and our prayer life is no longer disturbed by resentment. Thus it is for our own growth that we learn to forgive.”  
**Bob**

In the Catholic social thought context the fourth nexus, concerning restorative vision, bespeaks the broadly integrative Gospel vision of peace and liberation. The U.S. bishops' document includes a section on Scriptural foundations of the Catholic-Christian approach to crime, violence, and restoration. Following specific Old Testament references to God's giving of the law, and extension of justice and mercy, and references to Jesus' own ministry of healing and reconciliation, the bishops conclude with a quotation from John Paul II that concretizes the broader, integrative Gospel vision as regards violence and social brokenness. The quote is from John Paul II's July 2000 Message for the Jubilee in Prisons: "what Christ is looking for is trusting acceptance, an attitude which opens the mind to generous decisions aimed at rectifying the evil done and fostering what is good. Sometimes this involves a long journey, but always a stimulating one, for it is a journey not made alone, but in the company of Christ himself and with his support. . . . He never tires of encouraging each person along the path to salvation."<sup>72</sup> Catholic social thought's themes of solidarity and the preferential option for the poor and vulnerable, and promotion of peace and liberation from structural sin, themselves bespeak a broad restorative vision. And that is unsurprising, for when we stand back and take in the broad sweep of the Gospel's integrative vision of peace and liberation, we find therein not just Jesus and Cynthia, but Jesus and many men and women like her, and like ourselves, who require forgiveness and mercy and restoration, and find it in Him who is Prince of Peace. We find in the Gospel's own transformative – that is, redemptive – vision, the Jesus whose utmost act, of going to the cross, testifies to Jesus' own solidarity with those offended by violence, as well as his solidarity with those who offend, as our Lord himself, at the point of his own death, forgave those offended him (Luke 23:34; 43).

#### [4] CHALLENGES AS OPPORTUNITIES FOR SOCIETY, CHURCH, AND ACADEMY

As I noted at the beginning, both restorative justice and Catholic social thought are best thought of as orientations and as movements. I have presented broad themes, from which my listeners can discern how insights from restorative justice and Catholic social thought can best be instantiated – or, to speak theologically, incarnated – in society, church, and academy. So to conclude I will simply list some challenges that I see for society, church, and academy relative to the topic of restorative justice, examined from the lens of Catholic social thought. But I present these challenges in the positive sense of *opportunities* – opportunities, in light of Jesus' paschal mystery which necessarily orients Catholic Christian social thought, opportunities to encounter that Jesus and to ourselves be transformed by his restorative, redemptive action in our own lives.

"People's belief systems have been greatly corrupted by the pain caused by crime. . . . Politicians and other leaders are afraid to do the right thing out of fear that this will hurt their careers, and in the mean time, our communities continue to suffer. . . . The spiritual challenges are that places of worship need to get involved and play a more active role in educating people about forgiveness, and redemption, and the benefits of healing society. . . . I believe that college students can play the biggest role . . . I believe that by educating college students about all the positive benefits [of restorative justice], it will be possible to author a bill to switch our penal system to one of restorative justice."

*Ali*

**[4.1] Society:** in a society such as our own, with vast resources but a troubling tendency to incarcerate away the living signs of our broader cultural addiction to violence, the challenge is

to go to the root of our social ills. But that is also an opportunity, an opportunity to harness the best of the American ethos, the diversity of our public square, to *engage one another* in a justice that is more relational, more restorative. That is not an easy social task by any stretch of the imagination. But – whatever one’s political affiliation – as the current presidential election process demonstrates, Americans have hardly given up on engaging the public square. In society, what can you do, concretely? Well, you might begin by considering signing your name to a new ballot initiative amending California’s Three Strikes Law – copies of which are available at the back. Beyond that – spread the word about restorative justice and Catholic social thought; write to your elected officials and advocate for restorative alternatives to strict punishment-only regimes.

**[4.2] Church:** the U.S. bishops’ *Responsibility, Rehabilitation, and Restoration* already outlines, I believe, a clear, well-reasoned Catholic approach to crime and violence. A link to the document is provided on your handout. And the document identifies eleven “policy foundations and directions” as well as seven further tasks particularly consonant with the Church’s own mission:

Policy foundations and directions:<sup>73</sup>

- Protecting Society\_
- Rejecting Simplistic Solutions\_
- Promoting Serious Efforts Toward Crime Prevention and Poverty Reduction\_
- Challenging the Culture of Violence\_
- Offering Victims the Opportunity to Participate\_
- Encouraging Innovative Programs\_
- Insisting That Punishment Has a Constructive Purpose\_
- Encouraging Spiritual Healing and Renewal\_
- Making a Serious Commitment to Confront Addiction \_
- Treating Immigrants Justly\_
- Placing Crime in a Community Context

Seven tasks particularly consonant with the Church’s own mission:<sup>74</sup>

- Teach Right from Wrong, Respect for Life, Forgiveness and Mercy\_
- Stand With Victims and Their Families\_
- Reach Out to Offenders and Their Families\_
- Build Community\_
- Advocate Policies That Offer Real Alternatives to Crime\_
- Organize Diocesan Consultations\_
- Work for New Approaches

Any of these policy directions or mission tasks, however, ultimately require of members of the Church, members of Christ’s Body, a spiritual orientation towards that conversion that stems from God’s grace in Christ, through the Spirit. Here I would simply restate the two lessons I proposed that we draw from Luke’s account of Jesus and Cynthia: first, a Christian vision of justice for those who commit wrongs requires that we *see* others *first as persons* (who have committed offenses), *with whom we have a mutual relational claim*. Second, Jesus’ ‘adjudication’ of Cynthia – “so I tell you, her many sins have been forgiven; *hence*, she has shown great love’ ... [and Jesus] said to her, ‘your sins are forgiven ... your faith has saved you; go in peace’” – Jesus’ adjudication reminds us that our duty, indeed our very ability, to fulfill the Greatest Commandment, the love commandment, *stems from* our being restored, and our restoration of others, to social and ecclesial communion. Particularly now, during Lent, we do



well to reflect on *how well* we have responded to this challenge as opportunity. Restorative justice is a call to ongoing conversion – in our own lives, and in the lives of our family, work, friends, and community.

**[4.3] Academy:** academic research into restorative justice is important. While restorative justice ultimately *is* a praxis intended to effect restorative healing in concrete contexts of crime and violence, *as a praxis* it also requires continued reflection back upon its own premises. The volume of restorative justice literature is growing, but more work needs to be done. Particularly in our own context here, at a Jesuit, Catholic university, we do well to ask what further academic inquiry from our own tradition, can contribute to the field. “Lock them up and throw away the key” seems to be, unfortunately, the dominant approach to criminal justice in our society – at least as it is portrayed by the media, if not believed by a majority of our citizens, including a good many Catholics. Part of the academy’s task is to continue engaging the kind of research that will publicize restorative justice’s actual outcomes. And again, here at a Jesuit, Catholic university that embraces as its motto “educating minds and hearts to change the world,” engaging in the type of research, teaching, advocacy, and student formation that truly *sees* the Cynthias of our own community and proposes concrete means for restoring them and those whom they have harmed, stepping up to that challenge is indeed an opportunity to incarnate our own values in the public square.

I thank you for the opportunity to speak with you, and invite questions and further dialogue both now, and beyond the time of our formal gathering. Please help to advance the challenge of restorative justice as an opportunity for advancing Catholic social thought’s transformative Gospel vision.

## Notes:

<sup>1</sup> Translation from Donald Senior, ed., *The Catholic Study Bible: New American Bible* (Oxford University Press, 1990).

<sup>2</sup> Adam Liptak, "1 in 100 U.S. Adults Behind Bars, New Study Says," *New York Times*, Feb. 29, 2008, A1.

<sup>3</sup> United States Conference of Catholic Bishops, *Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice* (USCCB Publishing, 2000). Also available at <http://www.usccb.org/sdwp/criminal.shtml> (last accessed January 19, 2008).

<sup>4</sup> Bureau of Justice Statistics, United States Department of Justice Office of Justice Programs, "Prison Statistics, Summary Findings," <http://www.ojp.usdoj.gov/bjs/prisons.htm> (last accessed February 9, 2008).

<sup>5</sup> The Sentencing Project, "Facts About Prisons and Prisoners" (December 2007; sourced from the federal Bureau of Justice Statistics), <http://www.sentencingproject.org.htm> (last accessed February 9, 2008).

<sup>6</sup> *Ibid.*

<sup>7</sup> Prison Policy Initiative, "U.S. Population," citing Peter Wagner, *The Prison Index: Taking the Pulse of the Crime Control Industry* (Prison Policy Initiative, 2003), <http://www.prisonpolicy.org/graphs/uspopulation.html> (last accessed February 9, 2008).

<sup>8</sup> Bureau of Justice Statistics, "Prison Statistics, Summary Findings."

<sup>9</sup> An incisive portrait of this problem, supported by extensive empirical findings, is Dorothy Roberts, "The Social and Moral Cost of Mass Incarceration in African American Communities," in *Stanford Law Review* 56 (2004), 1271-1305.

See also *Responsibility, Rehabilitation, and Restoration*, 10, noting that "recent studies show that African, Hispanic, and Native Americans are often treated more harshly than other citizens in their encounters with the criminal justice system (including police activity, the handling of juvenile defendants, and prosecution and sentencing). These studies confirm that the racism and discrimination that continue to haunt our nation are reflected in similar ways in the criminal justice system." *Responsibility, Rehabilitation, and Restoration* cites Ronald H. Weich and Carlos T. Angulo, *Justice on Trial: Racial Disparities in the American Criminal Justice System*, Leadership Conference on Civil Rights and Leadership Conference Education Fund (April 2000) and The National Council on Crime and Delinquency, *And Justice for Some* (April 2000).

<sup>10</sup> Roberts, "The Social and Moral Cost of Mass Incarceration in African American Communities."

<sup>11</sup> The Sentencing Project, "Facts About Prisons and Prisoners."

<sup>12</sup> Prison Policy Initiative, "An International Incarceration Comparison" (and citing Peter Wagner, *Americans Behind Bars: The International Use of Incarceration*, 2005), <http://www.prisonpolicy.org/graphs/internationalinc.html>, last accessed February 9, 2008.

<sup>13</sup> ACLU Capital Punishment Project, "Race and the Death Penalty," <http://www.aclu.org/death-penalty>, last accessed February 9, 2008.

<sup>14</sup> Death Penalty Information Center, "Facts About the Death Penalty" (February 8, 2008), <http://www.deathpenaltyinfo.org/FactSheet.pdf>, last accessed February 9, 2008.

<sup>15</sup> Prison Policy Initiative, "U.S. Population," citing Wagner, *The Prison Index*

<sup>16</sup> Prison Policy Initiative, "The Facts About Crime." PPI's references with respect to this analysis include the Bureau of Justice Statistics, as well as Alfred Blumstein and Joel Wallman, eds., *The Crime Drop in America* (Cambridge University Press, 2000).

<sup>17</sup> Prison Policy Initiative, "The Facts About Crime," <http://www.prisonpolicy.org/articles/factsaboutcrime.pdf>, last accessed February 9, 2008.

<sup>18</sup> The Sentencing Project, "Facts About Prisons and Prisoners."

<sup>19</sup> Prison Policy Initiative, "The Facts About Crime."

<sup>20</sup> Howard Zehr, *The Little Book of Restorative Justice* (Good Books, 2002), 37.

<sup>21</sup> The very first sentence of Kay Pranis's chapter on the values of the restorative justice movement offers a similar conclusion: "restorative justice as a field flows back and forth between practice that informs philosophy and philosophy that informs practice." Pranis, "Restorative Values," in Gerry Johnstone and Daniel W. Van Ness, eds., *Handbook of Restorative Justice* (Willan Publishing, 2007), 59.

<sup>22</sup> In the U.S. Bishops' *Responsibility, Rehabilitation, and Restoration*, the section on the "Scriptural, Theological, and Sacramental Heritage" of the Church's approach to crime and criminal justice specifically identified the importance of various tenets from Catholic social thought, namely: Human Life and Dignity; Human Rights and Responsibilities; Family, Community, and Participation; The Common Good; The Option for the Poor and Vulnerable; Subsidiarity and Solidarity. *Responsibility, Rehabilitation, and Restoration*, 21-25.

<sup>23</sup> Tony F. Marshall, "Restorative Justice: An Overview," in Gerry Johnstone, ed., *A Restorative Justice Reader* (Willan Publishing, 2003), 28.

<sup>24</sup> See, e.g., Johnstone and Van Ness, eds., *Handbook of Restorative Justice*; John Braithwaite, "Principles of Restorative Justice," in Andrew von Hirsch et al., eds., *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (Hart Publishing, 2003); Gerry Johnstone, "Introduction: Restorative Approaches to Criminal Justice," in Johnstone, ed., *A Restorative Justice Reader*; Marshall, "Restorative Justice: An Overview," in Johnstone, ed., *A Restorative Justice Reader*; Daniel W. Van Ness and Karen Heetderks Strong, "Restorative Justice: Justice That Promotes Healing," in *Restoring Justice*, 2<sup>nd</sup> ed. (Anderson Publishing, 2001).

<sup>25</sup> Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Herald Press, 1990), 81; also see Zehr, *The Little Book of Restorative Justice*.

<sup>26</sup> *Ibid.*

<sup>27</sup> See Van Ness and Strong, "Restorative Justice: Justice That Promotes Healing," 39, quoting John Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press, 1989), 172-173.

<sup>28</sup> Most any criminal law casebook or treatise would identify the four main purposes of criminal law punishment as being retribution, deterrence, isolation, and rehabilitation. A general survey of principles of criminal law punishment appears in ch. 2 of Joshua Dressler, *Understanding Criminal Law*, 4<sup>th</sup> ed. (LexisNexis 2006).

<sup>29</sup> See, e.g., Matthew W. Meskel, "An American Resolution: The History of Prisons in the United States from 1777-1877" in *Stanford Law Review* 51, 4 (April 1999), 839-865 or Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850* (Pantheon Books, 1978). Also see Lorna A. Rhodes, "Toward an Anthropology of Prisons," in *Annual Review of Anthropology* 30 (2001), 65-83.

<sup>30</sup> See, e.g., Karen O'Neill, "Organizational Change, Politics, and the Official Statistics of Punishment" in *Sociological Forum* 18, 2 (2003), 245-267.

<sup>31</sup> See, e.g., Zehr, *Changing Lenses*; Van Ness and Strong, "Restorative Justice: Justice That Promotes Healing," esp. 31-32.

<sup>32</sup> See, e.g., Mark Umbreit, *Victim Meets Offender: The Impact of Restorative Justice and Mediation* (Criminal Justice Press, 1994).

<sup>33</sup> See, e.g., Jennifer Llewellyn, "Truth Commissions and Restorative Justice," in Johnstone & Van Ness, *Handbook of Restorative Justice*, 351-371.

<sup>34</sup> Class discussion, Restorative Justice class (Law 2318), Boalt Hall School of Law, University of California, Berkeley, February 6, 2008.

<sup>35</sup> An assessment of the policy change appears in Crime and Justice Research Centre and Sue Triggs, New Zealand Ministry of Justice, *New Zealand Court-Referred Restorative Justice Pilot: Evaluation* (New Zealand Ministry of Justice, May 2005).

<sup>36</sup> See, e.g., Jim Consedine, "The Maori Restorative Tradition," in *Restorative Justice: Healing the Effects of Crime* (Ploughshares Books, 1995), 81-107; Allison Morris and Gabrielle Maxwell, "Restorative Justice in New Zealand," in Hirsch et al., *Restorative Justice and Criminal Justice*, 253-268.

<sup>37</sup> See New Zealand's 1989 *Children, Young Persons, and Their Families Act*: except for murder/manslaughter, offenses are directed to the family group conferencing (FGC) system immediately, even prior to charges being brought. For more serious crimes an arrest and court appearance may come first, but then with referral to the FGC model. Those accused who deny any involvement are processed through a more traditional juvenile court trial, though in cases of a guilty verdict an FGC proceeding may occur before punishment is imposed.

Additionally, Australia has adopted restorative justice models from its own indigenous community. See, e.g., Jim Consedine, "Aboriginal Australia: Betwixt and Between," in *Restorative Justice: Healing the Effects of Crime*, 109-120. Canada has also successfully implemented restorative justice models. See, e.g., Julian V. Roberts and Kent Roach, "Restorative Justice in Canada: From Sentencing Circles to Sentencing Principles," in von Hirsch et al., *Restorative Justice and Criminal Justice*, 240-250. Scholars have compared the features of these models – centered on collaborative processes of restoration rather than correction – with similar features such as healing circles among Native American traditions in our own nation. See, e.g., Robert Yazzie, "'Hosho Nahasdlí' – We Are in Good Relations: Navajo Restorative Justice," *St. Thomas Law Review* 9 (1996), 117-124.

<sup>38</sup> See, e.g., Johnstone and Van Ness, *Handbook of Restorative Justice*.

<sup>39</sup> See, e.g., Balanced and Restorative Justice Project, "Balanced and Restorative Justice for Juveniles: A Framework for Juvenile Justice in the 21<sup>st</sup> Century," University of Minnesota (August 1997); Caren L. Flaten, "Victim-Offender Mediation: Application with Serious Offenses Committed by Juveniles," in Burt Galaway and Joe Hudson, eds., *Restorative Justice: International Perspectives* (Kugler Publications, 1996), 387-401; Executive Summary, "Face-

to-Face with Urban Crime: Community-Based Restorative Justice in Minneapolis”

([www.npcr.org/reports/npcr1046.html](http://www.npcr.org/reports/npcr1046.html), 1/27/05).

<sup>40</sup> See Sunny Schwartz, Michael Hennessey, and Leslie Levitas, “Restorative Justice and the Transformation of Jails: An Urban Sheriff’s Case Study in Reducing Violence,” *Police Practice and Research* 4, 4 (2003), 399-410.

<sup>41</sup> Presentation by Sunny Schwartz, RSVP co-founder and program director, to Restorative Justice class (Law 2318) at Boalt Hall School of Law, University of California, Berkeley, February 20, 2008.

<sup>42</sup> My own list here adapts and combines the fourteen Catholic social thought themes identified in Peter J. Henriot, Edward P. DeBerri, and Michael J. Schultheis, *Catholic Social Teaching: Our Best Kept Secret* (Orbis, 1992), 22-25, with William J. Byron’s “Ten Building Blocks of Catholic Social Teaching,” originally published in *America*, 31 October 1998 and reprinted in Thomas J. Massaro and Thomas A. Shannon, eds., *American Catholic Social Teaching* (Liturgical Press, 2002), 176-183.

Other basic texts of Catholic social thought include: Charles E. Curran, *Catholic Social Teaching, 1891-Present: A Historical, Theological, and Ethical Analysis* (Georgetown University Press, 2002); Kenneth R. Himes, ed., *Modern Catholic Social Teaching: Commentaries and Interpretations* (Georgetown University Press, 2005); and David J. O’Brien and Thomas A. Shannon, eds., *Catholic Social Thought: The Documentary Heritage* (Orbis Books, 1992).

<sup>43</sup> Zehr, *Changing Lenses*, 197.

<sup>44</sup> See, e.g., Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church* (USCCB Publishing, 2004), § 156 at 68-69, citing John XXIII, Encyclical Letter *Pacem in Terris* (*Acta Apostolica Sedis* (AAS) 55 (1963), 259-64) and the Second Vatican Council, Pastoral Constitution *Gaudium et Spes*, § 26 (AAS 58 (1966), 1046-47).

The U.S. bishops identify the rights and responsibilities theme as the second of six Catholic social thought principles orienting their analysis of crime and the restorative justice alternative. See *Responsibility, Rehabilitation, and Restoration*, 23.

<sup>45</sup> A helpful fundamental overview of Christian theological and social anthropology as drawn from Scripture and tradition occurs in J. Neuner and J. Dupuis, eds., “Humankind and the World,” in *The Christian Faith in the Doctrinal Documents of the Catholic Church*, 7<sup>th</sup> ed. (Alba House, 2001), 163-194.

Other primary ecclesiastical sources include: Pius XII, encyclical *Humani Generis* (1950); the Second Vatican Council, pastoral constitution *Gaudium et Spes* (1965), esp. §§ 10-18, 22-36; declaration *Nostra Aetate* (1965), § 1; declaration *Dignitatis Humanae* (1965), esp. §§ 2, 9; and the *Catechism of the Catholic Church*, 2<sup>nd</sup> ed. (United States Catholic Conference, 2000), §§ 355-384 and 1699-1715, which offer a snapshot of a fundamental theological anthropology, with extensive reference to *Gaudium et Spes* §§ 12-24; and Pope John Paul II, encyclical *Redemptor Hominis* (1979); Addresses to the Pontifical Academy of Sciences (1992, 1996, 1998); encyclical *Veritatis Splendor* (1993).

For scholarly commentary see, e.g., Anne M. Clifford, “Creation,” in Francis Schüssler Fiorenza and John P. Galvin, eds., *Systematic Theology*, vol. I (Fortress Press, 1991), 193-248; and Karl Rahner, “The Hearer of the Message” and “Man in the Presence of Absolute Mystery,” in *Foundations of Christian Faith* (Crossroad, 2004), 24-89.

<sup>46</sup> From the Old Testament compare, for example, the older, pre-exilic Yahwist (Gen 2.4b-3.24) versus the post-exilic Priestly (Gen 1.1-2.4a) creation traditions within the opening chapters of Genesis, as well as the covenant theology of the Prophetic texts, and the traditions of discernment within the Wisdom literature. Paul offers the most developed anthropology in the New Testament: humans are historical beings who are creatures of God’s creation (Rom 1, 3, 11, 15; 1 Cor 1, 4; 2 Cor 1:12). Given Paul’s theology of sin, his Christocentric and cruciform anthropology accents what Jesus, the One Man / New Adam accomplishes: correcting the wrong of the first man / Adam and re-creating us as a new humanity in Christ free to live a life of service and love (1 Cor 7, 9). See Neuner and Dupuis, “Humankind and the World.”

<sup>47</sup> Again, Donahue’s “The Bible and Catholic Social Teaching” is an invaluable resource.

<sup>48</sup> St. Thomas Aquinas offers the classical Catholic formulation of the natural law in *Summa Theologiae* I-II, q. 91, a. 2. Also see *Compendium of the Social Doctrine of the Church*, §140, or Stephen J. Pope, “Natural Law in Catholic Social Teachings,” in Himes, *Modern Catholic Social Teaching*, 41-71.

<sup>49</sup> The U.S. bishops’ *Responsibility, Rehabilitation, and Restoration* suggests a similar reading of the natural law, in terms of guiding individual conscience both *within* and *for the sake of* community: “we begin with a belief in the existence of a natural moral law that resides within the hearts of individuals and within the life of the community. This moral code is common to all peoples and is never fully excused by external circumstances. All are born with

free will that must be nurtured and informed by spiritual, intellectual, emotional, and physical disciplines and by the community.” *Responsibility, Rehabilitation, and Restoration*, 20.

<sup>50</sup> *Responsibility, Rehabilitation, and Restoration*, 16.

<sup>51</sup> “Human life and dignity” is the first of the Catholic social thought principles that *Responsibility, Rehabilitation, and Restoration* lists as duly influencing a Catholic response to crime and criminal justice. *Responsibility, Rehabilitation, and Restoration*, 21-23.

<sup>52</sup> The rendering of justice as “fidelity to the demands of a relationship” comes from John R. Donahue’s study of biblical justice themes – especially the terms *sedakah* and *mispas* in the Old Testament, and the tracing of OT themes of covenant law and justice in NT texts. See Donahue, “The Bible and Catholic Social Teaching,” in Himes, ed., *Modern Catholic Social Teaching*, 9-40. The “fidelity to the demands of a relationship” definition was first proposed by Donahue in “Biblical Perspectives on Justice,” in John Haughey, ed., *The Faith That Does Justice* (New York: Paulist, 1977), 69.

<sup>53</sup> This definition is my own, but it echoes Catholic social thought’s perhaps most normative statement of solidarity, Pope John Paul II’s *Sollicitudo Rei Socialis* (1987). There he claims that the *fact* of human interdependence imputes certain moral implications: its “correlative response as a moral and social attitude, as a ‘virtue,’ is *solidarity ... a firm and persevering determination to commit oneself to the common good*; that is to say to the good of all and of each individual, because we are *all* really responsible *for all*” (SRS §38, emphasis in the original text). Charles E. Curran’s definition also is worth noting: “solidarity helps us to see the ‘other’ – whether that other is a person, people, or nation – not just as an object to be exploited but as our neighbor and helper, called with us to share in the banquet of life to which all are invited equally by God.” See Curran, *Catholic Social Teaching, 1891-Present*, 36.

I have explored this topic in “Cultivating Responsive Solidarity,” presented at the Justice in Jesuit Higher Education Conference, John Carroll University, Cleveland, OH (October 2005) (available online: <http://www.loyola.edu/Justice/commitment/commitment2005/presenters.html>); and (with Timothy Brown) in “Incarnating Solidarity and Justice: Perspectives from Service-Learning in Philosophy and Ignatian Spirituality,” presented at Catholic Social Thought Across the Curriculum, University of St. Thomas, St. Paul, MN (October 2003) (available online: <http://www.stthomas.edu/cathstudies/cst/educ/03conference/papers/DenkBrown.pdf>).

<sup>54</sup> In addition to *Sollicitudo Rei Socialis*, other encyclical letters of Pope John Paul II such as *Redemptor Hominis* (1979), *Laborem Exercens* (1981), and *Fides et Ratio* (1998) also evidence the influence of personalist philosophy.

<sup>55</sup> See, e.g., Gordon Bazemore and Mark Umbreit, “A Comparison of Four Restorative Conferencing Models,” in Johnstone, *A Restorative Justice Reader*, 225-243.

<sup>56</sup> See Zehr, *The Little Book of Restorative Justice*, 44-47.

<sup>57</sup> *Responsibility, Rehabilitation, and Restoration*, 23.

<sup>58</sup> Byron, “Ten Building Blocks of Catholic Social Teaching,” 180.

<sup>59</sup> Bazemore and Umbreit, “A Comparison of Four Restorative Conferencing Models,” 225-243.

<sup>60</sup> Ibid. Also see Gordon Bazemore and Lori Ellis, “Evaluation of Restorative Justice” (397-423) and Hennessey Hayes, “Reoffending and Restorative Justice” (426-444) in Johnstone & Van Ness, *Handbook of Restorative Justice*.

<sup>61</sup> Prison Fellowship International, “Introduction” to *Restorative Justice Online* website:

<http://www.restorativejustice.org/intro>, last accessed February 26, 2008 (emphasis added).

<sup>62</sup> See, e.g., James Gilligan, *Violence: Reflections on a National Epidemic* (Vintage, 1996).

<sup>63</sup> This point is one of eleven “Policy Foundations and Directions” charted by the U.S. Bishops in *Responsibility, Rehabilitation, and Restoration*, 29-31.

<sup>64</sup> Various chapters in Part 4, “Restorative Justice in Social Context,” of Johnstone & Van Ness, *Handbook of Restorative Justice*, echo this framing, emphasizing both “how restorative justice has been applied – and adapted to apply – in ... various settings, but also ... how restorative justice can play a role in transforming the nature of controlling institutions and ... how the idea of restorative justice has itself been developed as a result of efforts to address a wider range of problems than juvenile and adult offending.” Johnstone & Van Ness, “Restorative Justice in Social Context,” 265.

<sup>65</sup> See, e.g., Pranis, “Restorative Values,” esp. 67-68.

<sup>66</sup> David Hollenbach provides an excellent contemporary analysis of this strand of Catholic social thought in *The Common Good and Christian Ethics* (Cambridge University Press, 2002), esp. ch. 3, “Recovering the commonweal” (65-86) and ch. 5, “Christianity in a community of freedom” (113-136).

<sup>67</sup> Among the U.S. bishops’ “Policy Foundations and Directions” are “promoting serious efforts toward crime prevention and poverty reduction” and other social and economic justice observations and recommendations. *Responsibility, Rehabilitation, and Restoration*, 29.

<sup>68</sup> *Responsibility, Rehabilitation, and Restoration*, *passim*.

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<sup>69</sup> John Paul II, encyclical letter *Sollicitudo Rei Socialis* (1987), § 38.

<sup>70</sup> *Responsibility, Rehabilitation, and Restoration*, 25.

<sup>71</sup> Johnstone & Van Ness address this issue in “The Meaning of Restorative Justice,” ch. 1 (5-23) in *Handbook of Restorative Justice*, 15-16.

<sup>72</sup> *Responsibility, Rehabilitation, and Restoration*, 19, citing “Message of His Holiness John Paul II for the Jubilee in Prisons” (Vatican City, June 24, 2000).

<sup>73</sup> *Responsibility, Rehabilitation, and Restoration*, 27-45.

<sup>74</sup> *Ibid.*, 47-53.