

Restorative Justice

a practical theory

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Paper for the diploma in Restorative Justice, Queens University, Kingston, Canada.

February 2004

Introduction

From August 11-16, 2003, I participated in the Restorative Justice course at Queens University, Kingston, Canada. The course worked out to be an eye opener in learning about the field of justice in society, especially in situations where the balance of justice has been violated by actions sanctioned under criminal law.

The interesting book *The Spiritual Roots of Restorative Justice*¹ is an interdisciplinary study of restorative justice in major spiritual traditions. In it one can find a wide and rich variety ranging from aboriginal spirituality to Chinese religions and from Christianity to Sikhism.

For this course I discussed the articles on “The spirit and practice of restorative justice in Chinese culture”, written by Edwin C. Hui and Geng Kaijun,² and “Restorative Justice in Islam, Theory and practice”,³ written by Nawal H. Ammar.

It convinced me, that, if one would try to win people for a concept or a vision, it might be helpful to have a theoretical framework that governs communication. To be understood, one must be understandable.

Since my study of law at Leiden University, I have been fascinated by “the philosophy of the law-idea” or, as it is sometimes called, “the philosophy of the cosmomic idea”. This Christian philosophy was developed by Dr. Herman Dooyeweerd and Dr. Dirk H. Th. Vollenhoven, who lectured in legal theory and philosophy at the Amsterdam Free University (from 1926).

They argued that no area of human life may be withdrawn from the sovereign claim of the Creator, and that philosophy and science cannot be pursued in a truly critical way if the philosopher or scientist does not account for his deepest motivation. Only by so doing can there be genuine communication between the different schools of philosophy.

In Dooyeweerd’s and Vollenhoven’s opinion, the reality cannot be reduced to some one aspect of it, as happens so often in the many “isms” of our time: naturalism, behaviourism, historicism, etc. All these are the inevitable result of the scientist’s tendency to seclude himself in his own particular field of study. They argued that full justice can only be done to reality when philosophy and science take into account its manifold character and the normative disclosure of its aspects.⁴

Also, international scholars like Dr. P. Cliteur, one of the leading Dutch humanistic philosophers, says that “Herman Dooyeweerd is undoubtedly the most formidable Dutch philosopher of the 20th century... As a humanist I have always looked at ‘my own tradition’ in search for similar examples. They simply don’t exist. Of course, humanists too wrote important books, but in the case of Herman

¹ Edited by Michael L. Hardley, State University of New York Press, 2001.

² Ibid., pp. 99-117.

³ Ibid., pp. 161-180.

⁴ http://home.planet.nl/~srw/inf_e.htm (website of the Association for Reformational Philosophy in The Netherlands). 1

Dooyeweerd, we are justified in speaking about a philosopher of international repute”.⁵

Aspects of reality⁶

Dooyeweerd used the prism as a paradigm to illustrate the complexity of day-to-day reality. Though one experience, one reality, it actually falls into several *aspects*. In my own words, the reality is divided in sub-realities. They are 100 percent real, but not 100 percent total. They are true in one’s experience, but might not be the whole truth. Those aspects have their own *law*, their own kernel. Our challenge is to find by which aspect an event or thing is dominated. This sounds theoretical, but later on I will explain the great value of this principle for the practice also of restorative justice, because it all has to do with balance, that things are as they should be.

Dooyeweerd was clear that the kernel of each aspect can be intuitively grasped, yet it is forever beyond the scope of theoretical thought to grasp. Each aspect is rich and complex, not simple, with an internal anatomy of portions, components, elements, levels, relationships, and so on, that are distinct and cannot be reduced to each other. It seems to be Dooyeweerd’s idea that functioning well in all the aspects brings about what might be called ‘joy’, a fullness of life, a well-being, a fulfilment, a peace, a health and prosperity in their widest and richest sense – what the Hebrew word *shalom* encapsulates. This *shalom* is exciting and diverse, yet at the same time reliable and coherent, and each aspect makes its own distinctive contribution thereto.

By ‘exploring’ the aspects, Dooyeweerd is inspired by Abraham Kuyper’s⁷ (1835-1920) *Sphere Sovereignty*. Dooyeweerd discovered 15 aspects. Below, I will introduce the 15 aspects by applying each to a criminal case.⁸

Criminal Case

Late at night, on December 24th, Sam Burglar (24) ‘visits’ the apartment of Mrs. Victoria Ictim (67), in downtown RJCity. At that time, Mrs. Ictim is attending Christmas mass. Entering her home, she finds her house in a mess. In addition to missing her credit card, she is missing the golden wedding ring of her late husband, who died a year before. Furthermore, several items are damaged and broken. Mrs. Ictim completely panics. Upon her screaming, she is comforted by a neighbour who was also the victim of a burglar, only one month ago. Later that night, the police investigated the house. After one month, Sam is arrested and as he pled guilty – also for several other crimes – he was sentenced to three years’ imprisonment.

In this obviously simple case, there is still a very complex reality of aspects.

Aspects and the criminal case

I. Numeric

The kernel of this aspect is discrete quantity. How many people are involved in our case? Only two, Sam and Victoria? Or three, including the neighbour? What about the husband of Victoria? Though not real at present, he undoubtedly has shown up, in her mind and memory. What about the police? Is it simply a job, or is one present not only as police officer, but also as a person, a member of society, entrusted with a special task? What about the newspaper article, though small? What about the family (children)? What about the neighbourhood? In short, quite a vast *number* of people are involved. They are all unique and different from each other.

⁵ <http://www.redeemer.on.ca/Dooyeweerd-Centre/>

⁶ See <http://www.basden.u-net.com/Dooy/aspects.html>

⁷ Dutch statesman/theologian, who lived from 1835-1920 and established the Free University of Amsterdam in 1880.

⁸ I’am aware that this is only a simplification of the (theory of the) aspects.

2. *Spatial*

The kernel of this aspect is the continuous extension. It is more than shape, position, distance, curvature, or whatever. There are no limits or borders. Two things can be present at the same time in the same space. One can say that the ‘crime space’, so to say, is not limited to the apartment of Mrs. Ictim. During the burglary Mrs. Ictim is in the church. Whether this is two blocks away or across the ocean does not really matter in terms of this aspect. For Mrs. Ictim, it is one continuous real life (line). At the same time, these facts are relevant in court for weighing the gravity of this case. The ‘space of crime’ might be greater (and more relevant) than the *locus delicti*.

3. *Kinematic*

The kernel of this aspect is motion, a flowing movement. Many persons and things are moving and flowing from one position to another. Things are stolen and taken away to a secret place, maybe to move or to sell to others. Also, because of this incident, a lot of people are moving, actually in reaction to and as a result of the crime committed.

4. *Physical*

The kernel of this aspect is energy, material and mass. At first, Dooyeweerd regarded motion as the kernel of this aspect. But for several reasons,⁹ he introduced the kinematic aspect.¹⁰ As for our case, I think this discussion *prima vista* is not relevant. At least, through this crime event, there is material and mass involved.

5. *Biotic*

The kernel of this aspect is life and vitality. Crime has an ‘organic’ reaction. It is not only damaging dead stones, but also hurting vital life. Fortunately, in our case no one’s life is physically hurt, during or because of the burglary. However, what if it was? For example, what if the neighbour called the Church and Mrs. Ictim went home completely confused, so that she did not pay good attention to the road and an accident happened? Is that relevant? In any case, crime affects life (lives) in many ways.

6. *Sensitive*

The kernel of this aspect is sensing and feeling. Crime hurts, especially emotionally. Worse than missing a credit-card might be losing her husband’s ring. No one will see the daily and intense pain of this. How will she sleep? Will she feel safe at home, especially during the nights? And so on.

7. *Analytical*

The kernel of this aspect is distinction. It is distinguishing one thing from another, in a logical and clear way. It presupposes a common scope of thinking. In our case the police stated that it was (too) easy for Sam to open the doors of Mrs. Ictim’s house. Sam was ‘forced’ to steal, as he was in a desperate need of money to buy his drugs. It would be false, however, to blame Mrs. Ictim, although it is right at the same time to advise her to take precautions. In my opinion, this aspect is very important in developing and ‘disclosing’ restorative justice. There is a threat that a lot of ‘beliefs’ and sciences may claim to have *the* exclusive key to restorative justice, and each will dictate exclusively its own wisdom. *Biblicism* might be as bad as *socialism* or *jurism*.

⁹ See for more information on the differences/essence at <http://www.basden.u-net.com/Dooy/physical.html#mass> and <http://www.basden.u-net.com/Dooy/kinematic.html>.

¹⁰ To see the physical aspect as centring on material and mass is useful for everyday living, but Dooyeweerd always preferred centring on energy. Why? We can see when we remember two fundamental findings of twentieth century physics. First, energy and mass are equivalent, under Einstein’s famous theories, so that only one is strictly necessary. Second, when we go down to the tiny ‘particles’ like the electron, the uncertainty principle states that their position is not determined – because they behave more waves (energy) than like particles of matter. Hence energy is considered the proper kernel of the physical aspect; see <http://www.basden.u-net.com/Dooy/physical.html#mass>.

8. *Formative*

The kernel of this aspect is formative power. Dooyeweerd called this the ‘cultural’ and sometimes the ‘historical’ aspect.¹¹ As to our case, this occurrence was ‘designed’ and ‘performed’ by Sam, although he did not plan (and possibly did not foresee) all the actions afterwards. His designing scope was limited, so to speak. However, something (a crime) happened and was formed in the past, and needed to be judged (*re*-formed) in the future, a very important and active process.

9. *Lingual*

The kernel of this aspect is symbolic representation. Crime has a voice. Mrs. Ictim and the neighbour spoke about it. So did the police (investigation) and the judge and the lawyers and so on.

10. *Social*

The kernel of this aspect is social interaction and institutions. Here are the human relationships, for sharing and caring – church, family, neighbourhood, community, the ‘circle’ of Sam. Also there are the police, the prosecutor, the probation board (Sam was on parole), the insurance company, and others. Crime has a vast social component. Note also another dimension that Sam is in no way showing respect to Mrs. Ictim. His only value is *his* desire (for drugs). On the other hand, what about his reintegration after prison, another social aspect!¹²

11. *Economic*

The kernel of this aspect is scarcity.¹³ For example, this asks for carefulness and efficiency.

It would be interesting to relate this to the ‘justice goal’ – restoration or ‘only’ punishment? How and what does the police do? Whom do they involve? Do they have trained people for the right processes? This is not the right place to discuss this matter and this aspect more broadly, but it is a very interesting aspect as it also relates to the (reparation of the) damage and harm that is done.

12. *Aesthetic*

The kernel of this aspect is harmony. Harmony is more than interaction. The pain of Mrs. Ictim is intense and will show up many times after the day the burglary happened. For example, essential is how her family and church will interact with her. Will they communicate with ‘Come on now, it should be over!’ or with tact and harmony?¹⁴ This aspect says something about the art of life. ‘The principle of art has been defined by someone as “*the same in the other*”’. This seems to sum it up nicely. “The same” speaks of harmony, while “the other” speaks of something worth harmonizing; unity in diversity.’¹⁵ Another facet is, for instance, the harmony of the whole justice process, whether ‘traditional’ or restorative.

13. *Juridical*

The kernel of this aspect is justice. What is due? Dooyeweerd's word was *retribution*, in its technical sense, not as revenge! All aspects should be in balance, whereas crime is disturbing the balance. The response to crime should be repairing and restoring that balance. In Western societies, however, confirming the (criminal) law seems to be more important than restoring life (circles). At the same time, my strong conviction is that the response to crime first of all is and should be a ‘law action.’ It should be legitimate. It must have a legal status. Restoring justice in its very essence is

¹¹ See <http://www.basden.u-net.com/Dooy/formative.html>.

¹² ‘When the gates of the prison open, the path ahead should lead to a better life’, President Bush, State of the Union address, 20 January 2004.

¹³ The Dooyeweerd-Centre suggests frugality: <http://www.basden.u-net.com/Dooy/economic.html> The Dutch literature however uses scarcity. In my opinion this emphasize better the kernel of the economic aspect. Resources are limited.

¹⁴ What also might be humour for instance.

¹⁵ C.S. Lewis, *Reflections on the Psalms*, Fontana Books, 1961.

not a noble human activity, but a calling to bring forth justice, to care for a public state of shalom.¹⁶ One of the ‘threats’ for restorative justice might be that people will (over)emphasise *restoring actions* as restorative justice. Because promoters of restorative justice most probably will be aware of injustice, part of their ‘mission’ will not only be to change concrete situations for the better and more just, but also to ‘fight against the law’ and the system and its servants. However, one should analyse and operate with harmony and knowledge.¹⁷

14. Ethical

The kernel of this aspect is self-giving love and generosity. It is more than being nice and friendly. It has to do with humility. For instance, it could be giving something such as time to visit Mrs. Ictim (as well as Sam!). Restorative justice will mostly demonstrate high ethical standards as it is focused on the other, the neighbour, the oppressed, the weak.

15. Pistic¹⁸

The kernel of this aspect is vision. One also could say it is belief. In my own words, I would say the source of inspiration, wisdom and values,¹⁹ the starting line for thoughts and deeds. They are to be applied (‘translated’, formed) into concrete situations, whether positive or negative (crime). In the pistic aspect, one can find the basic presumptions of a concrete act or plea, for example, for a type of legal system. Tell me your belief, and I will tell you how you will respond to crime.

In conclusion

This contribution is no more than a seed; at least I hope it is this. It is not a tree under which one can rest in the shade. Maybe it has raised more questions than answers. For me, this being my first exercise, it indeed has.²⁰ Crime (prevention) has many dimensions in day-to-day reality. I am deeply impressed and stimulated by a lot of people around the world, in different cultures and with various beliefs, who offer themselves practically to work for restoration, both for victims and for offenders. At the same time, I think this ‘global restorative movement’ must be supported with wisdom from various ‘aspects’, so to speak. One needs a platform of communication so that people with an immense variety of values and scopes of reference can at least in an understandable way communicate with each other, and hopefully also can explain their deepest (pistic) presumptions. By making oneself accountable in this way, one really can be fruitful and effective in discussions.

Last but not least, I do hope that many lawyers will take the courage to explore an active and leading position in this process of developing and promoting restorative justice, as a servant! – as a son and not as a slave of rules. Real justice reflects all aspects of life. As for followers of the great Scribe, Jesus the Christ, I would plea for responding to their vocation in a joyful way as the Lord shall judge the world with righteousness, and the people with equity (Psalm 98). If the Creator would and did so, is it difficult to judge what is just (to bring forth) for His creation?

¹⁶ Material, physical and spiritual. See Perry B. Yoder, *Shalom*, The Bible’s word for salvation, justice and peace.

¹⁷ Especially of the law-**system**. One might be on one side, focused on a concrete example, without (over)seeing the whole system. At the same time, however, I strongly support the actions of restoring justice. It is both-and.

¹⁸ Dooyeweerd chose the term, based on the Greek word ‘pistis’, meaning a deep-seated kind of faith.

¹⁹ This philosophy of Dooyeweerd helped me tremendously during my first year at Leiden University (law studies) when I was captured in the belief-science prison system. Confessing a transcendental belief, not to be proved by science, made it difficult to find a reasonable ear for biblical values. This integrated philosophy was very helpful in conversations, pointing out that everybody has his own belief (pistic kernel) with its consequences.

²⁰ Dooyeweerd used a lot of (new) words to explain the richness of his thoughts. See

<http://www.redeemer.on.ca/Dooyeweerd-Centre/contoursglossary.pdf> for more information.