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Restorative Justice. A new starting point. A new arrival point.

La justicia restaurativa. Un nuevo punto de partida.
Un nuevo punto de llegada

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Abstract

In this paper, I aim to endorse three main ideas. Firstly, the restorative concept is an innovative way of understanding human relations, especially, conflicts between people and the role of law. Secondly, the idea of justice based on this restorative approach implies a very significant change in the classical notions of law. And finally, the changes put forward by the restorative concept are relevant to an assortment of issues.

Keywords

Restorative justice; conflicts; Law; harm; relationships.

Resumen

En el presente artículo voy a defender tres ideas. La primera, que la perspectiva restaurativa es una nueva manera de entender las relaciones humanas, especialmente, los conflictos entre las personas y el rol del derecho. La segunda, que la idea de justicia conforme al concepto restaurativo supone un importante cambio en relación a las ideas clásicas del derecho. Y, finalmente, que este cambio que propone el restaurativismo es relevante para una multiplicidad de temas.

Palabras clave

Justicia restaurativa; conflictos; Derecho; daño; relaciones.

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Three main ideas

With a view to establishing the meaning of restorative justice, three main ideas will be discussed in this analytical article, based on the references indicated at the end. Firstly, it is important to emphasise that jurists need to be careful when talking about restorative justice since the tendency is to overrun narratives, and they are inclined to think that restoration begins and ends with restorative justice. One should not lose sight of the fact that there already was a “restorative narrative” prior to the restorative justice debate. This should not be overlooked and should, in fact, be emphasised; the restorative concept addresses how we think about human relations. It is not just a narrative about how we believe the law should be; it is an option apropos of how people understand interpersonal relationships should be. And on this note there are two main claims that the restorative approach makes. The first is that human relations should lean towards cooperation and collaboration since, as humans, we share common interests and, regardless, we have the possibility of creating global assets to develop these interests. Secondly, where this is not feasible and conflictive relations arise, it is important to learn how to resolve this conflict in a precise way, with certain characteristics that will help us to continue moving forward collectively. This is what enables us to think about the idea of schools, public policies, neighbourhoods, and so on, engaging in a restorative approach.

The second overall idea is that restorative justice does not start and end with the restorative criminal law narrative. Nowadays, for example, there is talk about restorative justice within the business environment. Work is being done on the development of restorative versus non-restorative family processes. Furthermore, among other examples, procedures are being set in place in the work environment that focus on a restorative dynamic. Thus, to speak of a restorative approach is not only to speak of criminal law, although clearly this is the context in which the restorative discourse has had the greatest impact. The appeal for restorative justice is linked to how the law is understood and the role it is called upon to play in our society.

And, finally, the third point that should be mentioned is that one must be careful not to confuse the extrajudicial context discourse with the restorative approach, especially the issue of alternative methods of conflict resolution. Not everything extra-judicial is restorative, nor does everything in a restorative context have to be extra-judicial. One can also think of the restorative concept both inside and outside of a process. It is possible to defend a restorative process that is linked to a judicial process without trying to displace it or even to incorporate restorative principles in the judicial process itself. Both strategies are important and answer the same question: how do we bring about change in the justice model?



What does the restorative approach demand from the law?

The restorative narrative advocates some changes in concepts and approaches related to, on the one hand, the role of justice, its operators and the people who are involved in it, and, on the other hand, to the way in which it is linked to the community. An excellent way of introducing this transformative proposal which involves the restorative discourse is to compare concept pairs.

From legal case to conflict

The first topic worth emphasising is that restorativists call for a cease in the strictly legal debate and uphold that more effort should be made to start understanding the actual conflicts that people and institutions present. It should not be forgotten that the legal trigger is the actual conflict that the parties report which is what leads them to seek legal advice aimed at finding an answer to their situation. When looking at the role of law within our societies today, it is easy to see that there is a strong tendency to use the legal case narrative as a way to describe a conflict. The distinction between case and conflict could be explained in the following broad manner: the legal case is a trimming down of the defining properties of a conflict. What the legislator does is to look at the reality where the conflict takes place and from among the set of elements that define that scenario identifies some of these elements as “legally relevant”. Thereon, the lawmaker incorporates those features, and only those, into the legal norm establishing the necessary conditions to elicit legal intervention; “if these properties are present, then it is Mandatory, Prohibited or Permitted...”.

Thus, the legal case starts to trim down the conflict’s real features. The reasons why a legislator chooses certain qualities, over others, in order to define a case are decisions that respond to varied rationale. Based on my understanding of the restorative concept, it is important to keep in mind that the combination of features that are being incorporated into the legal case are increasingly less relevant in terms of understanding and helping to solve the conflict between the parties. Hence, for numerous reasons, including the social complexity of the conflicts and their transformational speed, the law is progressively further removed from being able to sustain, over time, a satisfactory and efficient description of the conflicts it seeks to resolve.

The restorativist draws attention to this duality based on the awareness that a reality-trimmed law tends to be highly inefficient. If the purpose is to design a restorative process only taking into account the rationality of the legal case it is highly likely that such a process will be neither efficient nor effective. This distinction seems to be key. One discussion is whether or not the law is optimal in solving the problem, a debate of efficiency, and quite another is



whether or not the law succeeds in solving the problem, a debate of efficacy. For the restorativist, the changes that have been developed so far within the law are related to efficiency. However, what society is bringing to the table for discussion is a grievance regarding the lack of effectiveness. Accordingly, the first item the restorativist advocates is to insist that more attention be paid to the conflict and not only to the legal case.

From guilt to harm

The second topic is that, within the context of a debate that is more associated with the sentence narrative, a restorativist would say something like: the narrative that constitutes or is constituted around the concept of guilt is interesting, but a broadening of the focus is needed to address not only guilt but also harm, on the one hand, and its impact on the relationship between people and institutions, on the other hand. The first question a restorativist asks is not “who did what?” but rather, “what has happened?” Meaning, “what was damaged?” and “how has the execution of the act affected the relationship between the people involved in the given context?”

This modification leads to increased relevance in terms of the questions. For example, there is significant difference in a restorativist answer when there is guilt but no harm; what should we do if there is neither concrete nor abstract harm? And in contrast, the restorativist thinks there is a lot to do and say when there is harm but no guilt. In short, there is a broadening rationale regarding the focus that the restorativist places, mostly, on criminal law or on any context based on a retributive logic.

Of course, the concept of harm is broader than the traditional concept of affecting a legally protected right. The harm that the restorativist addresses, and wants to address, goes beyond the question of what it is and what is the legal right that has been affected. So what this perspective seeks is to reopen the focus in light of a limited legal narrative.

From monologue to dialogue

The third topic worth emphasising is that the restorative thinker believes more in dialogue than in monologue forms. The restorativist believes that the classical procedural system (trial) is basically a monologue model. One side presents its legal arguments and tries to prove them, and then the other side answers with its legal arguments and proceeds to prove them, and so on. Finally, there is a third party called the judge who makes a decision around these opposing claims. Despite the interaction, what really happens is that there are two monologues that work in an adversarial court process of interaction. Each side strives



to present the best version of its claims and the worst version of the other side's claims. I believe that the restorative concept calls for a different process since this model at times feels rather like talking to a wall.

Following this logic, the type of process this philosophy seeks to develop responds, fundamentally, to three main concepts; cooperation, collaboration and composition. For the restorativist, dialogue is the basis for a space where people are able to move forward in a process that enables the setting of or the identification of common interests (cooperation), based on non-competitive attitudes (collaboration), and that allows for the pursuit of agreements (composition).

This is an essential factor which is why dialogue is a key aspect, because for the restorativist the solution and working in conflictive situations is the outcome of an interactive dialogue between parties. For example, in some conflicts it is a third party who decides what the damage is. Victims do not participate in a real, authentic and empowering process when it comes to identifying and defining the harm they want to be compensated for. In the restorative concept harm cannot be imposed on the parties from without but rather must be the result of a dialogic interaction.

From being a party to being a participant

The fourth topic, which is another important element in the shift in focus, is that the restorativist distinguishes between being a party and being a participant in a conflict. The restorative theory requires that in all these types of situations it is implicit that creating a restorative process means creating a process where the people involved in the conflict are the central characters. This protagonism is present in the conflict definition, in the precision of the account, in the identification of the damage and in the pursuit of a solution. If there is no protagonist, then the process will be anything but a process that follows a restorative logic.

From charging to acknowledgement

A key notion of restorative logic, the fifth topic, is linked to the concept of acknowledgement. In order to move towards the consolidation of a restorative setting it is necessary that the offender, in particular, understands and accepts three things: (1) that the subject carried out the action that caused the damage that is now to be restored, (2) that there were other alternatives to that action and (3) that the offender could have chosen not to do it or to do otherwise. Acknowledgement is a key factor of the restorative task. Without acknowledgement there is no chance of moving towards a consolidation of restorative dynamics.



It is obvious that in today's justice system the idea of acknowledgement does not play a relevant role. Best case scenario, it is evidence of the commission of the offence (confession) which can be recognised within a legal process framework but which no one helps to bring about through a thoughtful exchange. In court it is irrelevant if the offender comprehends and understands what he/she did and what caused the damage. The only thing that matters in the legal/judicial frame is that someone points a finger at someone else and identifies him/her as the subject/actor of the crime.

From having an obligation to feeling obliged

The sixth topic emerged some years ago when an Argentinian philosopher, Genaro Carrio, incorporated a distinction, namely 'having an obligation and feeling obliged', while translating Hart's book "The concept of Law", which, in my opinion, is crucial to restorative logic.

The notion of having an obligation is related to the appearance of a third party (legislator or ruling) that identifies a behaviour as required. One of the ways in which this requirement is expressed is by applying a sanction to the omission of that compulsory action (indirect motivation). For example, suppose the legislator wants to get everyone to perform act "X", this can be achieved by punishing everyone who fails to do "X". The idea of having an obligation implies that the third party, and the negative consequences thereby imposed, are acknowledged if the specific action is not carried out.

The notion of feeling obliged is generated in two entirely different surroundings to the previous concept. On the one hand, when the "feeling" appears, an overlap between the obliged subject and the one who obliges ensues; this is not external. To feel obliged is to accept a mandatory imposition as one's own. On the other hand, the reason for compliance does not lie in the negative consequences imposed by another subject but rather in the obliged subject's conviction regarding the improvement he/she believes is mandatory; this is not consequentialism.

In the restorative concept it is necessary to create settings and dynamics that generate a sense of obligation. The idea of having an obligation is not enough to produce a change or to avoid a relapse. The court of law, as we know it nowadays, is limited to creating the perception of having an obligation: "I do it because an authority demands it and if I am found out I will be punished", and not of feeling obliged as in "I do it because it is the right thing to do".

The external-consequential point of view has proven to be very limited when the goal is to avoid relapse or repetition of criminal behaviour.



From the logic of the past to the logic of the future

Another significant topic within the restorative viewpoint is that it does not just consider what happened but rather it questions what can happen. In restorative thinking it is essential to work with the idea of changing or transforming (agents of change) and these concepts evoke futuristic logic.

Today justice systems centre their attention on what took place. The entire justice system revolves around the question of what happened in the past. In turn, the notion of the future lies in an outcome that can only stem from the sanctioning act itself; the subject will not do it again because he/she was sanctioned for what he/she did in the past. The outcomes do not seem to be, in this regard, so optimistic about the success of exclusively punitive strategies.

From repair to restoration

The final topic is that restoring must not be confused with repairing and compensating. Restoration is a step beyond the mere repair and compensation of an affectation or harm. The main difference lies in two aspects: intangibility and relationship. The first is that the notion of restoration includes not only tangible damage, as in 'How much is what was stolen from me worth?', but also intangible harm, 'How can I resolve the feeling of insecurity after what has happened to me?' This is a broader view of the conceptualization of damage. When we talk about correcting or compensating, we are talking about tangible damages, meaning the identification of the damage in terms of sense perceptible characteristics and it is usually divisible (money, time, amount of pollution, etc.). When working with restorative justice, the damage estimation is not defined by its quantitative aspects, namely how much things cost, how much time has been lost or what is the pollution level produced. It is necessary to build, from the restorative point of view, a conceptualization of the harm which takes into account not only the tangible aspects but also the intangible ones.

Furthermore, as mentioned above, in regard to the guilt narrative the restorativist focuses on the discourse of harm and the discourse of relationship. Let us imagine a process where the offender settles the harm he/she has caused. Once compensation has been settled the offender disengages from interaction with the victim. There is no restorative dynamic here. What the restorativist calls for is that the process account for the reconstruction of the relationship. How are the victims and the perpetrators going to relate to each other in the future in this context in which harm has been done? The harm is repaired, but people and their relationships are restored.



If one thinks about these spaces and this focus change, this shift from case to conflict, from blame to harm, from having an obligation to feeling obliged, from monologue to dialogue, from the classical award by a judge or an authority that says “This is the problem!” to a discourse of composition, collaboration and cooperation; if we move from the discourse of being a party to being a participant and a protagonist, if we change the discourse of reparation and compensate to a discourse of restoration, opening up the game to the concept of intangible harm, of mending the relationship, and if we care about the idea of offender recognition and accountability as much as the idea of victim legitimization, we would be entering a restorative discourse.

Problem Statement

The issue the restorative notion addresses is directly linked to a way of understanding human relations. Thus, the restorative philosophy opposes, on the one hand, the classical way in which people and institutions have been characterised and, on the other, the traditional perspective in which its relationships, particularly their conflictual relationships, are understood.

The traditional perspective

In the traditional view, this problem has responded to a series of assumptions and considerations which are those that the restorative philosophy seeks to question. Among these, the following three stand out:

The bad man theory. An important aspect of the interpretation to which restorative thinking is opposed is its negative view of the human being (pessimistic anthropology). This is what leads to the assumption that people tend to behave in bad, egoistic and harmful ways, etc. This pessimism can be constructed in two different ways. Firstly, that human beings respond to this negative quality because their environment (the lack of resources) makes them behave in this way. And secondly, this type of behaviour is a way of being and it is related to how people perceive the world regardless of whether or not this is really the case. In other words, in a world of plenty there would also be people who behave in bad, egoistic and harmful ways, etc. This assumption, in any of its interpretations, explains why people tend to build conflictive relationships and not cooperative or collaborative ones; It does not make sense to collaborate because the context is what it is or because it is not possible to see the context from a different perspective.

The premise of inexpertise. The pessimistic portrayal of the human condition moreover brings up the issue of the subjects' inadequacy to be able to control rational thinking. This difficulty can be approached in two non-exclusive ways. On the one hand, people have issues building cooperative and collaborative



relationships; and on the other, the obstacles that human beings face when managing their conflict and the possible dynamics of conflict resolution. The premise of inexpertise is not coextensive with the bad man theory; in a world of good people it would still be feasible to defend the idea of subject imperfection.

Authority and awards. In conjunction with the previous conditions there is a third assumption, specifically as regards the resolution of conflicts. Given that human beings neither can nor know how to deal with their conflicts, it is vital that the quest for solutions be based on the intervention of factors that are external to the relationship between the parties. In this sense, firstly, external guidelines created by external people are required; as are, secondly, external authorities who can apply them. This conceptualisation is called resolution methodology by award, granted by a third party that takes top-down decisions based on factors that are external to the perceptions of the conflicting parties.

These three paradigms generate a context that directly affects the roles people play in terms of understanding how relationships are built and sustained. The most notable consequences of this characterization are the following:

Zero-sum game. Relationships tend to be seen by people as zero-sum game interactions. Human beings who cannot and/or do not know how to find areas for the advent of common interests will conceive their relationships, fundamentally, as a struggle where all the benefits that one party gains, are all those that the other party loses and vice versa. There are, thus, no positive benefits in the construction of the relationship. The idea of building cooperative and/or collaborative relationships makes no sense under such assumptions.

Vertical relationships. This absence of benefits as a consequence of the inability and impossibility of human beings to build collaborative and cooperative relationships generates, fundamentally, a tendency towards conflict. And, in the latter type of relationships, the dynamics of interaction will lean towards the development of vertical logic; tending towards imposition rather than conviction, and sanction rather than reflection.

Power before influence. Finally, in this dynamic of relationship building, power resources end up weighing more heavily than influence resources. A power resource is thought of as an element that serves to modify the behaviour in others, even against their will (threats, promises, warnings). A resource of influence is understood as a factor that serves to modify the way others think and from there to transform the way they behave (dialogue, arguments, reflection). This perspective, which is what restorative thinking challenges, focuses on the exercise of power.

Finally, this way of looking at relationships also has consequences for potential and/or actual conflict spaces. When thinking about public policies, schools, discipline in sport, business decisions and, among others, justice and the law, a specific way of understanding the management and pursuit of solutions to conflictive relations emerges from the assumptions presented.



Not taking a leading role. A conflict cannot be resolved by the people or the institutions that are a part of it. They cannot take a leading role in the quest for solutions. The only possible option is the involvement of third parties (judges, headmasters, politicians, etc.) who, on the basis of their power, are able to assign a solution to the problem which the parties involved will accept as the appropriate response.

Use of compulsive resources. Following the same dynamic mentioned earlier, the main resources used to intervene in a conflict are compulsive resources (threats, warnings, promises and commitments). That is, those that aim to impact on the will and not on the conviction to modify behaviour. The idea of a sanction or of a merely disciplinary response, is, in fact, an expression of this compulsive resources approach.

Not convince. Based on this Hobbesian-style description, such as the one accepted by this entire approach, it is ultimately pointless to make efforts to convince another or to jointly seek a solution that satisfies, if not completely at least partially, everyone involved in the conflict. From this perspective, the use of compulsive resources in general and the threat of sanctions in particular become an end in themselves. The way of resolving conflicts is adjudicative and retributive for anthropological and methodological reasons.

These three fields (anthropological/methodological, the construction of relationships and the way in which human beings address and seek to solve their conflicts) are the ones that restorativists need to address in a variety of domains. I believe it is important to insist on two issues. In the first place, the restorative concept discusses a way of understanding human relations that can occur in many settings (school, communities, sports, justice, etcetera). In the second place, the advocated debate begins with the reasons that lead to a specific way of resolving conflicts (no protagonism, compulsive resources usage).

Nine claims of the restorative viewpoint

Having addressed the problem in this way, nine claims which shape the restorative way of thinking can be identified. When these are taken on by the legal debate they define the foundations of the transformative proposal aimed at modelling a different law and a different legislative processes.

- 1) Anthropological positivism. There is no need to adopt a bad man theory. People understand the value and the purpose of proper behaviour. To claim this is not to deny that there are moments in which individuals or people may behave improperly or illegally. But this does not empower us to presume or affirm the existence of a negative factor that is substantial to the human condition.
- 2) Ability. Human beings have the opportunity to learn. Even in cases where it is necessary to transform people or their environment, individuals



have the means to do so by learning various ways to achieve these goals. There is no lack of expertise. It is not uncommon that improper or illegal behaviour is linked to a lack of development of competences, skills and abilities in individuals due to a lack of adequate education and training.

- 3) **Autonomy and self-composition.** People can develop autonomy in order to address their relationships with collaborative and cooperative logic. The presence of an authority that sets the means and the ends of human interactions is not inevitable, although it may sometimes be necessary. For the same reasons, it is possible to work with self-compositional methodologies where solutions to problems and conflicts arise from the bottom up through the participation of all those involved.
- 4) **The common good.** The game of human interactions is not, in most cases or at all, depending on the conception, a zero-sum game. In our interactions, it is generally possible to create and develop collaborative and cooperative dynamics based on the conviction of the existence of positive benefits for all participants. Even in a world as divided into sectors as the perspective proposed by the law, the idea of a universal legal good is increasingly discussed; a common good that the law must protect through an individual's right regardless of the specific jurisdiction to which he or she belongs. The interconnected world in which we live is also a world filled with generalised problems and conflicts. At the same time, their solution increasingly requires the intervention of a multiplicity of subjects with different convictions, ideologies and that come from different countries and continents.
- 5) **Symmetrical relationships.** The creation of a space where the common good emerges and where collaborative and corporate relationships are formed makes an asymmetrical view of relationships unnecessary. Cooperating and collaborating inevitably implies accepting the symmetric interaction between the parties. But in addition, even in the context of conflict, the restorative concept recognises that it is possible to create interactions where the parties relate to each other on the basis of arguments; a space where dialogue makes sense as a driving force in pursuit of solutions. And, by this same logic, the exercise of authority through sanctions cannot be considered as an end in itself.
- 6) **Change the way of thinking.** In the restorative philosophy change is possible. In fact, facilitators have been characterized as agents of change. In this context people can change and alter their way of thinking. It is possible to agree in our interactions because we have the potential to listen to each other and to understand each other's point of view, however diverse it may be.



- 7) A leading role. Human beings have the option of taking a leading role when building relationships. Even in a context of conflict, there is no reason to displace the parties involved in the process of finding solutions.
- 8) The use of non-compulsive remedies. In this new context that the restorative proposal addresses, compulsive remedies should be an exceptional practice and not a widespread dynamic. Threats, among others, should be used only in specific situations and not as a tool that serves as a basis, especially in the context of conflict, for any interaction of the parties in pursuit of a solution. The conviction regarding behaviour appropriateness will always be stronger than the fear of sanctions due to non-compliance.
- 9) To convince. If this is so, the idea of creating opportunities for the parties to share, such as subjects of public reason, their proposals, their ideas, their points of view, and so on, makes sense. For the restorative philosophy the goal should be the conviction in the process and in the outcome rather than the imposition of the outcome.

Topic relevance rationale

In order to assess the topic's relevance, it is important, given the scope of the approach, to take into account the level of analysis (general or specific) and the field of consideration (schools, sport, community, public policy or the law among others). In this section three aspects will be focused on: relevance from a general overview for different fields, relevance from a general perspective for the law and relevance from a specific perspective for criminal law.

Overall perspective and multiple aspects

From an overall perspective the relevance of this subject matter lies fundamentally in three concepts; coexistence, peace and accountability.

Coexistence. The first relevant aspect of the debate that is advocated by the restorative concept is related to the likelihood that human beings can generate spaces for coexistence. The issue of coexistence from a cooperative and/or collaborative logic is associated to the issue of the future of our communities, as has become clear, for example, with regards to the COVID-19 global pandemic that occurred between 2019-2021. Only cooperative and collaborative dynamics between people within a community and between communities themselves have proven to be effective in helping to better navigate this harrowing global event.



Peace. In addition to coexistence, the second relevant word is peace. Especially when relationships are conflictual, the idea of a peaceful resolution to our conflicts becomes relevant. In turn, when the restorative concept advocates participatory, self-compositional, reflective, non-compulsive, and so on, methodologies, what it is defending is a peaceful perspective of conflict resolution. In fact, historically, these methodologies have added value to the idea of peace-building within our communities.

Accountability. The third word that makes the restorative narrative relevant, is the issue of accountability. This philosophy advocates the need and the possibility of changing the way human beings have historically related to each other; transferring the leading role and thus the responsibility to third parties with authority. The significance of the idea of becoming the central characters in our own relationships is the basis for the claim that we are responsible for what happens in our relationships. Being responsible allows human beings to become aware of the consequences of their actions in relation to other people and to the context in which these interactions take place (environment).

Thus, when restorative public policies such as participatory budgets are used in a city, the aim is to generate a peaceful coexistence that allows us to take responsibility for how our cities, our neighbourhoods, our squares, and so on, are going to be transformed. When schools incorporate methodologies for conflict resolution among students, such as school mediation or conferencing, the aim is to provide these young people with the tools to act in a peaceful and non-violent manner in the face of conflict. Or, ultimately, when we talk about positive or restorative discipline in the face of conflict in sport that turns into violence, we are thinking about the possibility of people learning from what has happened and not relapsing into their harmful behaviour.

General perspective and law

Regarding the impact of the restorative discourse on a general view of what the law is and the role it is called upon to play in a 21st century society, the words that that come to mind that identify this relevance are: effectiveness, legitimization and innovation.

Effectiveness. Historically, the issue of optimising the system's response to the citizenry's problems has been discussed in the legal and judicial sphere. These debates fall under the scope of legal system efficiency, i.e. the answer to the question of how can the legal system achieve its objectives in a quicker and less costly way? However, the relevance of the restorative discourse is that it aims to change the focus of the debate. The important question is not how to achieve efficiency but how to achieve the effectiveness of the system, i.e. the answer to the questions of whether the legal and judicial system today serves the



objectives it sets out to achieve and, given that the restorative thought adopts a negative answer, what needs to be changed in order to achieve these objectives. The shift from an efficiency debate to an effectiveness debate is a relevant aspect of the advent of the restorative discourse.

Legitimation. For some time now, in many Latin American countries, we have been witnessing a strong debate about the legitimisation, especially of the judiciary and, concurrently, of the law. There has been much debate as to whether the model described in previous sections really has the status to present itself as a tool to help citizens resolve their conflicts. The debate has been raised not from the point of view of the legality of the intervention but from the point of view of the foundational qualities of the authorities that create and apply the legal norms, i.e. the debate is about the existence of spurious and non-transparent interests that guide both the legislature and the judiciary in developing and implementing the legal system. The restorative debate is likewise relevant since in this same transformative proposal of the law and the judicial process, it enables a superior and improved legitimisation of said law and judicial process through the creation of spaces where citizens become participants in their construction and development. This implies, by way of example, a fundamental change in the role of the judge and of the principles that today govern our judicial process. The creation of law in the restorative version is not, nor should it be, extraneous to the citizenry. And the judicial process is not a space dominated by judges and lawyers who exclude the protagonism of the people involved. This is ultimately relevant because participatory justice in a democratic society and under the rule of law renews the legitimising votes that these institutions require in order to be operational in today's society.

Specific perspective and law

But unquestionably, if there has been an area in which the restorative discourse has played and is playing a relevant role in terms of transformation, it is in the context of criminal justice in general and juvenile justice in particular. The words that underline this relevance are: pedagogy, and alternative methods.

Pedagogy. A fundamental aspect on which the restorative concept has focused, the debate refers to the soundness of the use of punishment as a response to the commission of an offence. The restorative philosophy argues that punishment as an end in itself, apart from other issues, has the disadvantage of making it impossible to improve the dynamics of non-recidivism and non-repetition of unlawful behaviour. Thus, the impact of this philosophy has been related to the advent of important debates on how the legal and judicial system should respond. The incorporation of pedagogical responses that are gradually carrying more weight within the criminal field is one of the relevant consequences of the debate advocated by restorativists.



Alternative methods. In this search for pedagogical responses, a second factor has been the integration of the alternative measures narrative within the criminal justice system. In an increasing number of countries, dynamics that act as alternatives to the judicial process are evolving. These alternatives, which are sometimes presented within the process and sometimes are parallel to it, seek to institute learning processes in the offender that serve to establish an understanding of the harm the subject has caused with its actions. Recognition and accountability are the aims of the response if non-recidivism is to be achieved. In the same vein, alternative methods ask the offender and the victim to identify, through their participation, the best way to achieve restoration of the damage and of the bonds curtailed by the commission of the crime. Again, this is a relevant consequence of the challenge that the restorative concept is presenting to the more classical perspectives of punishment and retributivism.

By way of conclusion

Ultimately, in keeping with the aforementioned, the restorative concept suggests a different baseline for understanding conflictive relationships and the role that the law is called upon to play therein. But at the same time it defends the need to present a different viewpoint that values the introduction of new objectives, aims and goals linked to the way in which people address and strive to solve their conflicts.

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