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From Conflict/Dispute Resolution and Mediation to
Restorative and Regenerative Relational Practice
A practical and conceptual workshop

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This workshop will present and discuss conceptual elements hopefully leading to more grounded understanding, attitudes and associated skill-sets enabling participants to engage in *applications of restorative practice* in the communities and organisations they are part of or work with and more generally in their everyday communications and relationships. The workshop will first offer a conceptual introduction of about 20 minutes followed by a more conversational and experiential workshop-type session and a final 10 minutes of evaluation of and reflection about the experience.

Circumscribing the proposed content of the workshop

We offer this workshop as a *participatory experience*, exploring the *relational basis* upon which '*restorative practices*' are – or could/should be – based. We understand *restorative practice* as an approach to working with individuals, couples, groups, communities, organisations and institutions in which the purpose is to move well beyond the 'solution' of conflicts or the 'mediation' between open or latent oppositional positions between parties and assist in '*moving them*' beyond the existing hindrances preventing (mutually) beneficial – and hence '*caring*' - processes and relationships.

Indeed, it is our belief that *human relational capabilities* have been severely eroded and damaged by the deepening cultural and ideological – as well as every-day-living 'practical' – emphasis on the *individual as a competitive, entitled and autonomous entity first and foremost* and that our *collective and relational interdependencies, obligations and commitments are secondary only* both in ontological, existential, legal and daily living or 'practical-life' dimensions. This renders the development of adequate attitudes and skills for participants intending to practice with restorative, healing and caring intentions (rather than *merely* 'solve conflicts' or 'resolve disputes') difficult if not conceptually incomprehensible.

We hope to assist workshop participants in being prepared and ready to participate in restorative practice in diverse settings based on a 'new' (but also very old!) understanding of *relationship* and the absolute *necessity of reinserting it into the praxis of our daily lives and into our organisational and community processes if we hope to have a chance to deal with the social, economic, political and – especially – ecological issues humanity is facing*. As Maria Puig de la Bellacasa (2017:217) suggests in her conclusion to her book *'Matters of Care: Speculative Ethics in a More Than Human World'* (Minneapolis: University of Minnesota Press)

Across this book I have come back, as a reassuring refrain, to Joan Tronto's generic definition of care. I have also placed it within discussions that engage with more than human worlds and agencies. Tronto stated that care includes "everything that we do to maintain, continue, and repair 'our world'" – our bodies, our selves, and our environment – "so that we can live in it as well as possible in a complex, life sustaining web. I have tried to gently decentre the "we" and the "our" that put human agency as the starting point of care, prolonging relational ontologies' ongoing problematization of any claims to a centre.

Restorative practice is applied in settings as diverse as criminal justice, family matters, community settings, cross-cultural settings and educational and other organisational contexts and it is our intentions to explore how the above briefly outlined philosophical shifts can better inform relational and restorative practice. We illustrate this wide variety of settings below in the next five 'sections'.

Here follow a few examples of contexts in which restorative approaches have been inserted and applied.

1. Teshuvah: A Holy Formula for Living and Enlivening (Lisa Rappaport)

It's known as the *Four Step Apology*:

I'm sorry for...

This was wrong because...

In the future, I will...

Will you forgive me?

It de-escalates the conflict and allows the offender to take (some) responsibility. And then, like magic, once the wrong-doer has shown some vulnerability, the victim feels open-hearted and gladly offers forgiveness. It derives from the Jewish Torah, some 3000 years ago. *Maimonides* calls this same process the *Stages of Repentance*. Though different in name, the steps are essentially the same:

1. Admission of guilt or an acknowledgement of the transgression

2. Expression of remorse

3. Resolution for the future for behavioural change

4. These first three steps are the "essence of the confession", which set the stage for the possibility of forgiveness and the restoration of the capability to relate.

Maimonides says that atonement is not possible without asking forgiveness. For Maimonides, resolution for the future in the form of behavioural and relational change, is critical. The litmus test is, if presented with a similar set of circumstances will the offender avoid the sin or repeat the offence? Where do we get stuck? How often do we dig into patterns of behaviour (i.e. relational patterns) that keep us from changing? What does it take for us to become more vulnerable and accept responsibility for our actions?

The Jewish/Hebrew example is, by no means, the only historical one; in a 1993 article in the first issue of the *European Journal on Criminal Policy and Research*, Elmar Weitekamp offers a broad historical background to what he then called ‘*Reparative Justice*’ and distinguishes between ‘*acephalous*’ (non-state) and ‘*state*’ societies and proposes that

‘The historical origin of restitution/reparative justice has existed since humans began forming communities. It is easy to assume from the literature that that punishment is the most universal way of responding to norm violators. However, by expanding the analysis to acephalous societies, we find that restitution to the victim and his kin frequently took precedence over action against the offender. While restitution takes something away from the offender, it is different in form, purpose and consequences from punishment in the form of retribution or revenge.’ (p. 72)

Whilst early state societies maintained ‘reparative’ modalities for conflict resolution between victims and perpetrators (and their respective families or clans or tribes), the state gradually established a monopoly on criminal punishment and (in Medieval Europe) by the end of the 12th century, ‘*the erosion of reparative justice was complete*’ even if the concept of reparative justice remained alive (p. 75-6).

2. Chris Moore-Backman posted an article about the Trump election and the consequences for all the divisive issues that election will make and has already made worse; he wrote it for *Yes! Magazine* Oct 25, 2017 (<http://www.yesmagazine.org/@also-by?author-chris+moore-backman>) with the title: *How I can offer reparations in direct proportion to my white privilege?* The following is his introduction which serves well to show how ‘restorative work’ can be applied to and inserted into the everyday...

“I had a fascinating breakfast conversation with my 11-year-old daughter a few days back. The night before I had a fitful dream—one that was short on plot and imagery, but chock-full of emotion. In this case, the feeling was of a deep, immovable sorrow. When I awoke, it didn’t take long to recognize that the article I’d been working on—this article—was definitely working on me, too.

During breakfast I knew my daughter could tell I wasn’t on solid ground. She’s a sensitive soul, and I figured I should go ahead and tell her what was going on. “*I’m struggling with my article, Isa,*” I told her. She already knew that I was working on a piece about *reparations*. The word was new to her, though the concept was second-nature. She took a bite of her apple as I continued: “*What do you do when there’s more damage than you could ever hope to repair?*” Still chewing, Isa gently prodded me with her eyes, not quite understanding what I was getting at. “*Like with what white people have done—and continue to do—to Black people and to Native Americans,*” I said. “*All the violence and theft. All the broken promises. What do you do when there’s so much more than you could possibly repair?*”

Isa finished her bite, then spoke without hesitation: “*You should repair as much as you can.*” she said. “*And then you should teach young people about what happened, so it doesn’t happen again.*” Guileless, she took another bite from her apple. It gave her time to find the rest of her answer: “*And you need to say sorry.*”

3. Relating Restorative Practice to ‘justice’ (one of the areas in which it has found many applications), it is worthwhile to reproduce some of the “assumptions” of the *restorative justice paradigm* as summarised by Susanne Holtquist (1999 6(2) p. 65 in Journal of Community Practice).

- Crime violates people and relationships;
- Justice focuses on the identification of needs and obligations resulting from the harm inflicted on people and relationships;
- Justice encourages dialogue and mutual agreement, giving victims and offenders central roles in addressing the needs and obligations caused by the harm inflicted;
- Justice for the victim, the offender, and the community is measured by the restoration of “*right relationship*”;
- Justice is judged by the extent to which responsibilities are assumed, needs are met, and healing of individuals and relationships is fostered;
- Stigma are removable.

In this understanding of justice, **crime** is seen as injury 1) to the victim; 2) to interpersonal relationships; 3) to the community; 4) to the offender. Justice, then, begins *with the needs and obligations, towards the goal of healing, of each of the realms of these dimensions*. Within all of this, the *priority in relational re-conciliation is clearly located in the recognition and positing of prime responsibility for the crime (or, more generally, for the violence in the relationship) with the perpetrator and in the recognition that such re-conciliation has to happen on the terms of those who have been violated*. ... violence is understood as an expression of *systematic power imbalance and abuse* and unless the restorative approach includes the necessary re-dress of this imbalance (directly in the concrete relationship between violators and violated and – tentatively – in the systemic societal arrangements), it may very well “restore” (and thus strategically maintain) relational violence (albeit, probably, in another form).

Some of the definitions and circumscriptions of restorative justice approaches may be useful; Weitekamp (1993:70) summarises as follows:

The terms in contemporary literature about reparative justice are restitution, reparative schemes, victim-offender reconciliation, redress, mediation programmes, community service, atonement, indemnification, compensation and are used interchangeably, meaning basically the same or having at least the same intentions: repairing the damage done by the offender, getting the victim involved, reconciliation between the victim and the offender, creating an alternative to imprisonment and current criminal justice sanctions and making society at large more humane.

A more recent (Victorian Law Reform Commission, 2004) revue of the Family Violence Laws in Victoria (Australia) suggested (p.51):

‘Restorative Justice’ refers to a range of practices that can occur at different stages of the criminal or – more rarely – civil justice system. While there is no single agreed definition of restorative justice,... we use it to describe a process that brings together people who have a

stake in a specific crime or wrongdoing to resolve how to deal with the consequences of the wrongdoing. Instead of focusing on punishment, restorative justice has a focus on 'healing rather than hurting, respectful dialogue, making amends, caring and participatory community, taking responsibility, remorse, apology and forgiveness' (from John Braithwaite, 'Shame and Criminal Justice' (2000) Canadian Journal of Criminology 281,293). Some common models of restorative justice are family conferencing, victim-offender mediation and circle sentencing.

4. We also want to remind participants of the various '**(re-)conciliation**' programs and experiences which have been deployed in countries like South Africa ([https://en.wikipedia.org/wiki/Truth_and_Reconciliation_Commission_\(South_Africa\)](https://en.wikipedia.org/wiki/Truth_and_Reconciliation_Commission_(South_Africa))) after the collapse of the Apartheid regime; in Rwanda after the genocidal waves which had destroyed all traces of conviviality in that country (https://en.wikipedia.org/wiki/Gacaca_court); and several other examples. The restorative intention in all of these cases has been foregrounded, with truth-telling and other story-telling approaches being the foremost 'techniques' applied (<http://theconversation.com/rwanda-and-south-africa-a-long-road-from-truth-to-reconciliation-75628>).

As well, many of the countries in which Indigenous peoples have maintained or indeed reclaimed – however precariously – some of their traditional modes of conflict resolution should be mentioned here; the *International Institute for Restorative Practices* (iirpcommunications@iirp.edu) in Bethlehem - Pennsylvania (USA) is probably the best starting point to explore some of the worldwide activities in this area.

5. Finally, our relationship with the *non-human: restoring and regenerating our ecological home so that we may all survive.*

Joanna Macy's (https://en.wikipedia.org/wiki/Joanna_Macy) work of dealing with despair and of restoring our relationship with nature and of the need to re-learn how to take care of ourselves in the midst of the devastation we have inflicted on our 'home' is very well known; but there is now a plethora of new work which bridges the natural and the social sciences and develops creative and hugely suggestive ways of restoring our relationship and capabilities to relate with 'nature' and regenerating what we have so thoughtlessly destroyed over the centuries of 'modernity' up to this day.

Importantly, they also develop a new vocabulary needed to move away from simple linear and causal sequences and understandings and needed also to assist in expressing the multi-layered multi-factorial and multi-discipline and multi-level influences which condition our practice and which – in turn – are influenced by our relational 'agency'. The word Gilles Deleuze used for this way of 'looking' at reality was '*agencement*' quite unsatisfactorily translated into English as '*assemblage*' and here follow three distinct expressions of this perspective.

Donna Haraway, in *Staying with the Trouble* (2016), in the chapter on '*Tentacular Thinking*' (p. 50-1) writes:

'Historically situated relational worldings make a mockery both of the binary division of nature and society and of our enslavement to Progress and its evil twin, Modernization. The Capitalocene was relationally made, and not by a godlike Anthropos, a law of history, the

machine itself, or a demon called Modernity. ... A dark bewitched commitment to the lure of Progress (and its polar opposite) lashes us to endless infernal alternatives, as if we had no other ways to reworld, reimagine, relive, and reconnect with each other, in multispecies well-being.... Pignarre and Stengers affirm on-the-ground collectives capable of inventing new practices of imagination, resistance, revolt, repair, and mourning, and of living and dying well.'

A taste from Karen Barad, from the Preface and Acknowledgements of *Meeting the Universe Halfway* (2007: IX-X):

*This book is about entanglements. To be entangled is not simply to be intertwined with one another, as in the joining of separate entities, **but to lack an independent, self-contained existence**. Existence is not an individual affair. Individuals do not pre-exist their interaction; rather, individuals emerge through and as part of their entangled intra-relating. Which is not to say that emergence happens once and for all, as an event or as a process that takes place according to some external measure of space and of time, but rather that time and space, like matter and meaning, come into existence, are iteratively reconfigured through each intra-action, thereby making it impossible to differentiate in any absolute sense between creation and renewal, beginning and returning, continuity and discontinuity, here and there, past and future.... **Which is not to deny my own agency (as it were) but to call into question the nature of agency and its presumed localisation within individuals (whether human or nonhuman)**.*

And Anna Tsing in her *The Mushroom at the End of the World* (2015: p. 20 – 22) suggests:

*Progress is embedded ... in widely accepted assumptions about what it means to be human. Even when disguised through other terms, such as 'agency', 'consciousness', and 'intention', we learn over and over that humans are different from the rest of the living world because we look forward – while other species, which live day to day, are thus dependent on us. As long as we imagine that humans are **made** through progress, **nonhumans are stuck within this imaginative framework too**.*

*Yet the modern human conceit is not the only plan for making worlds: **we are surrounded by many world-making projects, human and non-human**. World-making projects emerge from practical activities of making lives; in the process these projects alter our planet. To see them, in the shadow of the Anthropocene's "anthropo-", **we must reorient our attention**. Many pre-industrial livelihoods, from foraging to stealing, persist today, and new ones (including commercial mushroom picking) emerge, but we neglect them because they are not part of progress. These livelihoods make worlds too – and they show us how to look **around** rather than **ahead**.*

And to finish off with this encompassing statement by John Heron (2006:6 & 42), who makes the connection between 'spirit', 'development' and 'relating' beautifully and eloquently:

*'A convincing account of **spirituality for me is that it is about multi-faceted integral development explored by persons in relation**. This is because many basic modes of human development – e.g. those to do with gender, psychosexuality, emotional and interpersonal skills, communicative competence, morality, to name but a few – unfold through engagement with other people. **A person cannot develop these on their own, but through mutual co-inquiry**. The spirituality that is the fullest development of these modes can only be achieved through relational forms of practice that unveil the spirituality implicit in them... The point here is that we enact spirit as the **reality of the in between**, that is, of the relation between persons, between persons and other entities of all kinds, and between persons and their*

physical and subtle environment – in the situation where we are now... So central spiritual inquiry is relational: opening to, and acting with, the divine spirit that connects persons and other entities in the immediate locality of the here and now.'

Indeed, a programmatic statement for the need to restore our capability to relate!

Another quote from Maria Puig de la Bellacasa' *Matters of Care* (2017:221) will serve well as a concluding comment for this rather unruly collection of – hopefully – stimulating thoughts-bits:

Thinking with care attracts attention to ethical interrogations meant to seem untimely and worthless from the perspective of predominant unilinear futurities, but we cannot let productivist stories, or even the earnest economies of service, define how nonhuman worlds will be appreciated. There must be other ways to get involved in fostering the ethopoietical liveliness of the more than human agencies that support, currently mostly coercively, that we get the care we need.

May “we” find other ways to be obliged, as well as possible.

References

- Barad, K (2007) *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter and Meaning* Durham: Duke University Press
- Bellacasa, Maria Puig de la (2017) *Matters of Care: Speculative Ethics in a More Than Human World* Minneapolis: University of Minnesota Press
- Haraway, D (2016) *Staying with the Trouble: Making Kin in the Chthulucene* Durham: Duke University Press
- Heron, J, (2006) 'Spiritual inquiry: a handbook of radical practice', <http://www.human-inquiry.com/thoughts.htm>
- Holtquist, Susanne (1999) in *Journal of Community Practice* 6(2)
- Moore-Backman, Chris (2017) *How I can offer reparations in direct proportion to my white privilege?* in *Yes! Magazine* Oct 25 (<http://www.yesmagazine.org/@also-by?author-chris+moore-backman>)
- Tsing, A Lowenhaupt (2015) *The Mushroom at the End of the World: on the possibility of life in Capitalist Ruins* Princeton: University of Princeton Press
- Victorian Law Reform Commission (2004) *Review of Family Violence Laws Consultation Paper* Melbourne: Victorian Law Reform Commission
- Weitekamp, Elmar (1993) *Reparative Justice: Towards a victim-oriented system* in *European Journal on Criminal Policy and Research* pp. 70-93