

# “Son be a Dentist:” Restorative Justice and the Dalhousie Dental School Scandal

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## I. Restorative Justice as a Theory of Justice

The symposium on the theory and application of restorative justice held by the Harvard Negotiation Law Review in February prompted a renewed look at restorative justice not merely as a new method of achieving a familiar understanding of justice but as a new theory of justice itself. This was an important contribution because restorative justice is, in my view, most interesting and innovative in its aspiration to articulate not just a new theory of punishment, or compensation, not just a new way to address crime but a new theory of justice. Many of the contributors demonstrated the ways in which restorative justice as a theory of justice reconfigures and realigns traditional classifications of justice: corrective justice as the rectification of wrongful gains, retributive justice as the infliction of reciprocal suffering on a wrongdoer, distributive justice as the concern with allocation of goods and entitlements. They also showed how restorative justice is able to affect a radical shift in the relationship between procedural justice and substantive justice and to allow for a reemergence of an Aristotelian notion of justice as virtue. Through restorative justice, justice can become a personal accomplishment and activity not just something imposed from on high.

Reconfiguring all these ideas of justice in terms of an understanding of justice as the creation of right relation; the creation of relations of reciprocal respect, reconceiving justice as an activity, as a personal achievement and an achievement of a community all seem to me to be enduringly worthwhile and tremendously ambitious aspirations and the symposium highlighted both these aspirations and many of the inspiring ways in which they have been fulfilled.

## II. Restorative justice and the privileged offender

My role in this discussion, however, was that of critic: appreciative critic but critic nonetheless.

Tremendous respect and admiration is due for many of the projects described in the course of the symposium: Carl Stauffer's work with rebuilding communities in Sierra Leone, Chandra Banks' work in the Cambridge Public Schools, Hon. Jay D. Blitzman's restorative initiatives in the Massachusetts Juvenile Court, just to name a few of the contributions at the symposium, are all amazingly worthwhile and inspiring examples of restorative justice in action and they all demonstrate convincingly the superiority of restorative justice to the alternatives in those contexts. Nevertheless, I raised a few concerns. I took a look at a situation that occurred at the end of last year at Dalhousie Faculty of Dentistry.

The case involved postings on a private Facebook group called "Dalhousie Dental School Class of 2015 Gentlemen." The posts included a poll in which members were asked to vote between two female classmates as to which they would prefer to "hate fuck." There were jokes made about using chloroform on women and having rough sex with them, having sex with women until they were unconscious. So on this Facebook group all kinds of very misogynist, hostile and sexualized things were being said about women in general and female classmates in particular with pictures of female classmates included.

There was a public outcry demanding that the students be expelled. However, the President of Dalhousie University, Richard Florizone, decided that the incident would be dealt with through a restorative justice process. This immediately drew a lot of controversy. Many people, including (by now) over 50,000 signatories to a petition, took the view that the students ought to be expelled.<sup>1</sup> The president made it clear that the restorative justice process did not rule out expulsion of the 13 male students. Hundreds of people protested on campus denouncing the restorative justice alternative. Four of the female students anonymously wrote an open letter of complaint to the president. They wrote: "The university is pressuring us into this process, silencing our views, isolating us from our peers, and discouraging us from choosing to proceed formally... This has perpetuated our experience of discrimination. This approach falls far below what

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<sup>1</sup> Meghan B, *Expel Students Who Were Members and/or Participated in the Facebook Group Called 'Class of DDS 2015 Gentlemen'*, CHANGE.ORG, <https://www.change.org/p/dalhousie-university-president-dr-richard-florizone-expel-the-students-who-were-members-and-or-participated-in-the-facebook-group-called-class-of-dds-2015-gentlemen> (last visited Mar. 13, 2015).

we expected from you, and what we believe we deserve."<sup>2</sup>

In opposition to this, the Feminist Legal Association of Dalhousie, a group of feminist law students, came out in support of the process arguing that restorative justice provided the best procedural framework within which to address and begin to change the culture of misogyny in the university. The letter read in part, "If conducted diligently, this process will also unearth the causes and context surrounding the behavior of these men, thus exposing a deep and systemic culture of misogyny in the dental school that we demand be addressed campus-wide."<sup>3</sup> They viewed the incident as just one manifestation of a broader culture of misogyny and sexual violence in society in general and the university in particular and saw restorative justice as the best way to go about addressing the broader cultural issues.

The names of the men who made the posts have been withheld from the media. This has also been very controversial. The men were suspended from participation in the faculty's student dental clinic but those suspensions have since been lifted.

There are some tricky issues for restorative justice here. On the one hand we have the optimism about the efficacy of restorative processes in dealing with a wrongdoing that, as the Feminist Legal Association notes, is just one manifestation of a bigger problem. By including all stakeholders like the professional association and such, and hearing the women students' voices, giving the women students the ability to tell the perpetrators about the harm they experienced as a result of the wrongdoing, by making space for that conversation the argument is that the process will do a better job of addressing the broader issues, shifting the culture, and so forth.

I'm not convinced. First, I think we should have a general concern about restorative justice in the context of wrongdoing by privileged individuals holding on to privileged positions. What is often compelling about restorative justice is the way it reveals the vulnerability and disadvantage of perpetrators of crime. Perpetrators have often experienced terrible hardship and have themselves been victims of violence and abuse. Much of the pathos of restorative justice derives

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<sup>2</sup> *Dalhousie Students Condemn Restorative Justice in Facebook Scandal*, CBC NEWS (Jan 7, 2015, 4:12 PM), <http://www.cbc.ca/m/news/canada/nova-scotia/dalhousie-students-condemn-restorative-justice-in-facebook-scandal-1.2891365>.

<sup>3</sup> National Iraqi News Agency, *Dal's Feminist Legal Association Supports Restorative Justice Approach*, EQUITIES (Dec. 29, 2014, 2:00 PM), [http://www.equities.com/index.php?option=com\\_k2&view=newsdetail&id=157144](http://www.equities.com/index.php?option=com_k2&view=newsdetail&id=157144).

from its capacity to reveal and make some move toward healing the disadvantage of the wrongdoer. Restorative justice can generate life-changing compassion for wrongdoers at least in part by making the difficult circumstances of the offender apparent. From that place of compassion for the wrongdoer restorative justice can sometimes make clear why it is so important not to banish vulnerable offenders to the exile of imprisonment.

But how do things change when we are dealing with very powerful, very privileged wrongdoers who are not facing the possibility of banishment or exile from society in general but who are facing the possibility of being stripped of their considerable status, their position of trust, and their ticket to an income potentially in excess of half a million dollars a year? Do the kinds of reasons we have for extending compassion to marginalized offenders through restorative processes transpose to this context of privilege?

There could be no question of mere retribution here, of merely aiming at inflicting suffering on the offenders, were they to be expelled. A traditional process resulting in the expulsion of the students because of the violation of a code of student behavior would presumably be aimed not primarily at punishing the students but at ensuring standards of good character and good behavior in an elite profession that holds a position of considerable trust.

### III. Compassion and Schadenfreude in Dentistry

Restorative justice rests on optimism that offenders do not experience schadenfreude when they are confronted with the victim's narrative of suffering. The theory of restorative justice does not acknowledge the possibility of the offender who enjoys inflicting pain in the first instance and enjoys hearing the victim's account of how she has suffered in the restorative encounter. It rests on an assumption that the offender has gainsaid the suffering he caused and will be moved to compassion and remorse when he is made aware of the true extent of the damage he has done.

This optimism raises some interesting issues when we apply it to dentists. I was discussing the Dalhousie case with a law student and she said she thought it would be different if the wrongdoers had been law students; people seeking to join a profession dedicated, at least in some abstract way, to justice, but that perhaps it didn't matter as

much in a profession that was just about fixing teeth. I couldn't have disagreed more. What these men were accused of was fantasizing about rendering women unconscious and inflicting pain on them. This is dangerously close to what dentists do for a living. Of course they're supposed to be helping, but their job involves doing painful things to people, always to that extent vulnerable, and sometimes unconscious.

I, for one, am prepared to confess to believing in what I fully acknowledge to be an unprovable stereotype, that some dentists enjoy inflicting pain. Think of the song "Son be a Dentist" in Little Shop of Horrors with Steve Martin as Dr. Orin Scrivello whose mother observed his sadistic behavior, shooting puppies and poisoning guppies and advised him how to capitalize on his tendencies?<sup>4</sup>

Your temperament's wrong for the priesthood  
And teaching would suit you still less  
Son, be a dentist you'll be a success...

I am your dentist  
And I enjoy the career that I picked  
I am your dentist  
And I get off on the pain I inflict

Of course it's a caricature, and maybe it's unfair, but the reason it is funny is because it reflects a societal anxiety about dentists and sadism. It is a stereotype, but it is one that the dental profession cannot overlook. We are talking about people seeking admittance to a profession that has an obligation weed out those who like inflicting pain. And what these men have just demonstrated is that they enjoy the idea of humiliating and inflicting pain on women who are unconscious.

So what does this have to do with the suitability of restorative justice to deal with the issue? I think it has everything to do with it because restorative justice can't cope with the wrongdoer who gets off on inflicting pain. The whole momentum of restorative justice relies on eliciting genuine compassion in the wrongdoer for the victim. The possibility of sadism is of particular concern in this kind of sexualized context.

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<sup>4</sup> Little Shop of Horrors – Dentist Song, Youtube.com, <https://www.youtube.com/watch?v=bOtMizMQ6oM>

But let me try here to connect up the point about schadenfreude and the point about privilege. Let's take a look at what is being suggested about the broader systemic context. The systemic discrimination in the broader faculty, as I understand it from women dentists, is that some men dentists and dental students do not like the incursion of women into the field at least in part because they see it as diminishing the cache of dentistry and turning it into a pink ghetto. The worry of male students is that the influx of women in the profession may decrease the status of and increase the demands on dentists. They fear an influx of women into the profession will result in the men making less money, having less prestige and being subject to greater expectations in terms of service to patients.

So what if the point of this kind of behavior by men students is to cause women pain, to make them feel less comfortable, to discourage them from participating? Certainly this would be part of a systemic problem. But if part of that systemic problem, the goal of the misogynist culture, is an effort to make women uncomfortable so that they will leave or operate ineffectively thus securing the greater status of men, well, how can restorative justice deal with that?

The question is important because it shows how women students are in a real bind when it comes to narrating the harm they suffered from the wrongdoers' actions. If the point of the conduct was to make women less effective members of the professional community how does it help to enlighten these men about how effectively they have managed to achieve that end? In the restorative encounter the women victims will have to explain the harm they've suffered and in doing so they will reveal their vulnerability. To address the systemic concerns they'll most likely also be expected to explain how this kind of thing impedes their effective functioning in the professional community. Doing that involves considerable risk for women who know that they are already seen by the misogynist culture as both ineffective and not tough enough. They're going to need to take that risk on the hope that what they will elicit in these men is compassion and remorse. But given the real issues of self-interest and long term economic advantage here there is no way that the restorative justice process can predict, let alone

promise, a compassionate and remorseful reaction on the part of these men. There is such a thing as pride at inflicting harm.<sup>5</sup>

#### IV. Restorative Justice: Compared to What?

In a book entitled *Hate Crime and Restorative Justice: exploring causes, repairing harm*,<sup>6</sup> Mark Austen Walters explores the possibility that restorative justice might work to heal group hostility and build bridges of trust across lines of difference. His hope was, I think, that restorative justice might work there much the way that the proponents of the restorative justice hope it will work in the Dalhousie Dentistry case. Walter's conclusions are not especially sanguine. He notes that an offender's community of care will often be the source of the very prejudices that inspired the hate crime in the first place. The restorative encounter then may be at risk of reinforcing rather than healing group hostility. Walters points out, however, that in many cases restorative justice is, practically speaking, not an alternative to a traditional court prosecution and criminal sentence. Rather it's an alternative to the authorities doing nothing at all about the hate crime. Where prosecutors would formerly have exercised discretion to drop a hate crime case they now refer it to a restorative justice process.

I do not suggest that the Dalhousie Dental School could ever have done absolutely nothing. From its inception the case has been way too high profile to ignore. I do, however, suggest that the media has created a false dichotomy between a formal process they imagine would result in expulsion and a restorative justice that would result in a gentle slap on the wrists. It is difficult to get statistics on these kinds of cases because university processes are confidential, but even where students are convicted of sex assault they are not normally expelled from the universities they attend as a result.<sup>7</sup> It would be highly unlikely therefore that a penalty of expulsion would be ordered in a case where students were arguably just talking about sex assault.

In my view, ideally, there would have been a clear rule in a code of student behavior that made

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<sup>5</sup> Pride at inflicting harm can also actually be bound up with pity for that loss. Achilles's pity for Priam's loss is explicitly bound up with his pride at inflicting that loss. I respond to Daniel Van Ness and Karen Strong on this point in *Compulsory Compassion: a critique of restorative justice* (Vancouver: UBC Press, 2004) at 98.

<sup>6</sup> Mark Austen Walters, *HATE CRIME AND RESTORATIVE JUSTICE: EXPLORING CAUSES, REPAIRING HARM* (Oxford University Press, 2014).

<sup>7</sup> See, e.g., Tyler Kingkade, *Fewer Than One-Third of Campus Sexual Assault Cases Result in Expulsion*, HUFFINGTON POST, (Sept. 29, 2014, 8:59 AM), [http://www.huffingtonpost.com/2014/09/29/campus-sexual-assault\\_n\\_5888742.html](http://www.huffingtonpost.com/2014/09/29/campus-sexual-assault_n_5888742.html).

it an expellable offence to post this kind of demeaning material about fellow students online. But there is no such clear rule and the chances of expulsion for this kind of conduct on current rules are slim.<sup>8</sup>

My point is that when assessing restorative justice we need to be clear about the real world alternatives. The formal process might have been a better choice in the Dalhousie case but not because it would have likely yielded a stiffer penalty for these men. We don't know yet what the outcome of the case will be. My sense is that a formal process would have been better because it would have asked less of the complainants who have already been through too much. A formal process would not have risked subjecting them to an additional harm of having to perform their suffering and vulnerability for wrongdoers who might respond by feigning compassion and remorse to further their own self-interest while actually experiencing schadenfreude.

But we need to keep asking: restorative justice compared to what? Many of the speakers at the symposium highlighted the way in which restorative justice, particularly in the United States, is the only available alternative to an insanely hyper-vigilant criminal justice system characterized by skyrocketing rates of incarceration, the criminalization of adolescence through zero-tolerance disciplinary practices in schools and policing procedures that could result in an arrest and criminal charge out of a situation where a mother calls 911 because her child is refusing to go to school.<sup>9</sup> There is no question that restorative justice is vastly preferable to that! But restorative justice should not be the only way around a manifestly unjust application of a traditional system either through gross over charging in schools or domestic cases or under charging of hate crime.

The media coverage of the Dalhousie case has now all but dried up. The process is ongoing. No doubt there will be much discussion of the

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<sup>8</sup> The speech would be unlikely to be constitutionally protected in Canada where rights of free speech are balanced against the equality rights of minorities. Recently, however, the University of Oklahoma expelled students who were caught on video singing a racist chant. If appealed the university's decision might well be overturned on 1<sup>st</sup> amendment grounds. See Nathan Koppel and Douglass Belkin, *University of Oklahoma Expels Two Students Over Racist Chant*, THE WALL STREET JOURNAL, (March 10, 2015, 10:47 PM), <http://www.wsj.com/articles/university-of-oklahoma-president-expels-two-he-says-identified-as-leading-racist-chant-1426008502>; Eugene Volokh, *No, It's not constitutional for University of Oklahoma to expel students for racist speech*, THE WASHINGTON POST, (March 10, 2015), <http://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/03/10/no-a-public-university-may-not-expel-students-for-racist-speech/>.

<sup>9</sup> These examples were mentioned in some of the contributions. See also David Saltman and Kenneth Gabbard, *EDUCATION AS ENFORCEMENT: THE MILITARIZATION AND CORPORATIZATION OF SCHOOLS* (New York: Routledge, 2<sup>nd</sup> ed. 2010).

process and its outcomes from both advocates and critics of restorative justice once it is concluded. When we're thinking about restorative justice as a theory of justice it's important not to draw our conclusions from favorable comparisons with terrible alternatives but to ask whether restorative justice is a viable first-best choice in hard cases.