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PHL 499.01: Senior Seminar

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Restorative Justice (RJ) has deep roots in various aboriginal societies, e.g., with New Zealand’s Maori people, with native South Africans, and with some Native American tribes. As South Africa’s Archbishop Desmond Tutu said in relation to South Africa’s restorative efforts just after apartheid: “Retributive justice is largely Western. The African understanding is far more restorative—not so much to punish as to redress or restore a balance that has been knocked askew. The justice we hope for is restorative of the dignity of the people.” RJ’s philosophies and practices have received much recent attention from white Westerners, but it’s clearly not a brand new way of thinking about community or the nature of violence and how to respond to it.

There is no single RJ philosophy. But RJ proponents tend to share the following views: (1) the Western judicial system’s manner of responding to criminal violence is not the only or even the best response; (2) instead of focusing exclusively on punishing the perpetrator, we need to focus much more on the victim, on restitution and reparation; (3) we need to deal with offenders differently, i.e., restore relationships with them rather than ostracizing and segregating them, show more compassion and respect for their dignity, and reach the offender’s conscience through non-coercive means; (4) involve the entire community, not only the criminal justice system, in repairing offenders, victims, and community.

In addition to the criminal court system, RJ approaches have been used in the aftermath of massive, government-sponsored violence. For example, after apartheid, Tutu was instrumental in forming Truth and Reconciliation Commissions (TRCs) to deal with such violence. Tutu commented that “our nation needs healing. Victims and survivors who bore the brunt of the apartheid system need healing. Perpetrators are, in their own way, victims of the apartheid system and they, too, need healing.” In addition to South Africa, TRCs have been established in other countries, including Chile, El Salvador, Argentina, and Canada.

Our goals in this course are to (1) clarify as much as possible RJ’s moral claims; (2) contrast RJ with other approaches to violence, especially to retributive approaches; (3) evaluate whether restorative justice is indeed “just”; (4) look at debates within the RJ community; (5) evaluate critiques of RJ; (6) review the extent of RJ’s application, e.g., juvenile courts, breaches of university sanctions, domestic courts, restitution to nonhumans, e.g., ecosystems and endangered species (Yellowstone National Park and Yellowstone wolves). In addition to our readings, we’ll watch two documentary films and welcome three guest speakers, all of whom have first-hand experience with RJ in the community.
Schedule

1/14 “Forgiven,” NY Times

1/16 videos on South Africa’s TRCs, & Martha Minow’s *Between Vengeance and Forgiveness*, Forward and chapters 1 & 2

1/21 ML King Day, No Class

1/23 *The Sunflower*, by Simon Wiesenthal, [D—write your paper before you read commentaries]

1/28 Commentaries to *Sunflower*

   [From] *Ethical Theory*, Richard B. Brandt (x)
   [From] *The Crime of Punishment*, Karl Menninger (x)
   [From] “Restitution: A New Paradigm of Criminal Justice,” Randy E. Barnett (x)
   “The Expressive Function of Punishment,” Feinberg (x)

2/4 Retribution: “Classical Retributivism,” Edmond Pincoffs (part 1 on Kant) (x)
   “Persons and Punishment,” Herbert Morris (x)
   “Marxism and “Retributivism,” Jeffrie Murphy [S] (x)

   Guest speaker?

2/13-27 Restorative Justice, chapters 1-7, Gerry Johnstone [S, date tba]

2/18 Presidents’ Day, No Class

3/4-6 *Repair*, Elizabeth Spelman [S 3/6]

3/11 Guest speaker at 4:30: Maylinn Smith, Adjunct Professor of Law and Co-Director of Margery Hunter Brown Indian Law Center, University of Montana

3/13 Discussion of Smith, Spelman, Bauer, and authors on retribution [D]

3/18-20 *American Wolf*, Nate Blakeslee

3/25-29 Spring Break
4/1 Guest Speaker: Rick McIntyre, Yellowstone National Park (McIntyre was one of the primary players in wolf reintroduction 20 years ago in YSNP.) [D]

4/3 Restorative Justice, Gerry Johnstone, chapters 8-9

4/8-10 Between Vengeance and Forgiveness, Martha Minow, chapters 3-6 [S 4/10]

4/15 Students’ choice

4/17-24 Student Presentations

Requirements
1) 3 2-3 page discussion papers. [D] on the syllabus for due dates: 30 %
2) 4 2-3 page synopsis papers. I’ll assign the passages. See [S] on the syllabus for due dates: 40%
3) Final paper, 8-10 pages undergrad./ 10-12 grad.: 20%
4) 30 minute presentation with a partner: 10%

Synopsis Papers [S]
You will simply write a thorough and detailed summary of an assigned passage in one of our readings. Usually I’ll ask you to summarize and/or untangle an important and complicated argument.

Discussion Papers [D]
Do not summarize! Please bring your own insights to the table. Hone in on a specific problem or twist, that “Ahaaaaa…”moment you have as you stumble across something puzzling, or wrong-headed, or a point that somehow sheds light on an idea we’ve talked about previously. Tell me something I don’t already know and that isn’t obvious. Stay focused. Work with a very specific idea rather than with an unwieldy, general one. THE TOPIC MUST BE ABOUT THE READING WE’RE CURRENTLY DOING.

Presentation
We’ll devote the last 3 days of class to student presentations. You’ll work in pairs. When something you read or that we discuss in class hits you hard in some way or puzzles you, note it. Think about it, research it, mention it in class to see if there’s uptake from someone else. Also come talk with me about it. Be sure the subject is focused and not overly broad. I need to meet with presenters to approve the topic no later than 4/10.

Final Paper
Run your thesis by me no later than 4/19. Focus, work with the literature we’ve read, write about something you strong agree with, disagree with, or find puzzling or incomplete. I’m not looking for a summary of the literature we’ve read or a research paper.
Law and Order
1.) Attendance and participation— This is primarily a discussion class, so attendance and participation are mandatory.
2.) I consider the following rude and unacceptable: ringing cell phones, open lap tops, reading the newspaper or working on something other than class materials in class, whispering to your neighbor, texting, coming into class late or leaving early (unless you’ve okayed this with me), in other words anything that keeps you or other students from giving me your full attention. I’ll call you out for these things just once. After that, I simply drop you from the class. Please just be considerate, responsible adults, and we’ll get on fine.
3.) See the University of Montana Student Conduct Code re. cheating, etc. (http://www.umt.edu.SA).