

„Last Generation“ – Terrorists or Victims?

Implications for Restorative Justice

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Let's try interactivity - but predominantly only with “students”

Who has heard about the (organization) “Last Generation”?

Does anybody like to describe very briefly some of their actions?

Structure of this lecture

About the “Last Generation” and their actions

- Arguments in favor of “criminals” and “victims”
- Language and Concepts in the context of victimology

The Four Choices Window

- Restorative Justice as a philosophy of connectedness and community building → my book in German language
- Restorative Justice: international backing, praxis, dialog → restorative society
- Conclusion

Assessment of “Last Generation”

Main status “offenders”

Main status “victims”

About language

Art. 2 of EU Directive 2012/29

- ‘victim’ means:
- (i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;
- (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death

Relevant concepts

crime vs. conflict / problematic situation

social peace vs. peace of law

hegemony vs. anti/counter-hegemony

ownership, life-world, transformation, voluntariness ...

rituals

restorative society

Conflict/problematic situation

- About the meaning of crime vs. Conflict or problematic situation
- Nils Christie: Conflicts as property
- Louk Hulsman: a) Critical Criminology and the Concept of Crime b) The Abolitionist Case. Alternative Crime Politics + Justin Piché: Pain in Vain ...

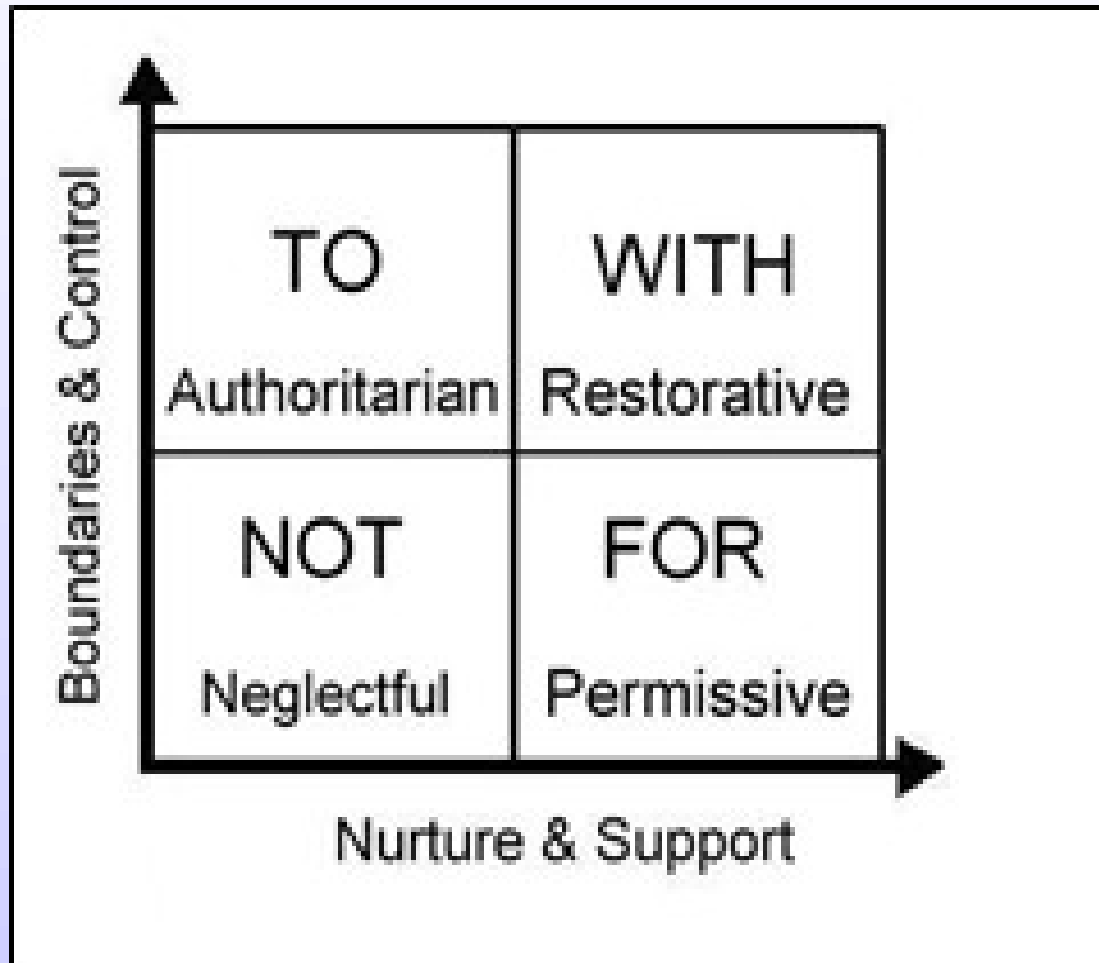
Social peace vs. (legal) peace of law

1. Please do not mix up social peace with a narrow political understanding!
2. It's about living together, interacting with each other, about social relationships.
3. No (social) peace without justice, acknowledgement / recognition, respect and appreciation of the other.
4. Peace of law (legal peace) prevails when the highest court has passed judgement.
5. Social peace and legal peace can be very different phenomena (cf. Christie 1977).

The concept of hegemony

- Gramsci developed a theory of hegemony and anti-hegemony
- the criminal justice system has a hegemonic definitional power
- agenda setting by mass media (incl. social networks) dominates the public discourse
- Discourse analysis can reveal how meaning is shaped by power structures

The Four Choices Window from T. Wachtel & P. McCold



the philosophy of Restorative Justice

- “Restorative justice” refers to any process which enables those harmed by **crime**, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence, through the help of a trained and impartial third party (hereinafter the “facilitator”).“
- Article 3 Council of Europe CM/Rec(2018)8-Definition of Restorative Justice
- “At its broadest Restorative Justice can be understood as a strategy or set of strategies oriented toward the resolution of **conflicts or disputes** between parties, with applications in a number of areas: civil, corporate, criminal and political.“
- see Shapland, Robinson & Sorsby (2011: 4)

Motto / guiding principle of RJ

Since harm is the central problem in a restorative framework, restorative justice requires a response that does no further harm.

Howard Zehr

Recommendation of the Council of Europe CM Rec (2018) 8 + Declaration of Venice

Hagemann, O. (2018). Commentary on the Council of Europe Recommendation (2018) 8. In: Revista de Victimología / Journal of Victimology, Número 8, pp. 154-176.

- Reaffirmation of the introduction and strengthening of RJ in the context of criminal law
- Explicit recommendation to go beyond criminal law
- Reference to EU Directive 2012/29 on Victim Protection
- Partially new/changed terminology, e.g. facilitator instead of mediator
- Partial concretisation

EU Directive 2012/29/EU of the European parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA



- (46): „Restorative justice services, (...) can be of great benefit to the victim, (...)“
- Cases shall be referred to RJ and procedures and guidelines shall be developed (Art. 12, 2.)
- Victims shall be informed about RJ services (Art. 4, I.(j))
- Sceptical position by Pemberton & Mulder: main concern of the directive is the sole interest of the victim in the procedure.

Re-translation of M. Nussbaum (2017: 273 = German Ed.). Anger and Forgiveness: Resentment, Generosity, Justice

The criminal justice system and 'punishment' form a catch-all mechanism that we use to concede certain failures in our other strategies of prevention and deterrence. Only when we convince ourselves that certain people or groups are predestined to be bad and do bad things can we feel comfortable turning to the criminal law for help with a social problem. ... we will see that even people who appear to be as evil as one can be - the South African Boers, for example, who implemented the evil apartheid system - have the capacity to be good, and that they can become helpful and useful citizens if they are approached with this understanding and are not held to account harshly. We should let our discomfort guide us when we think about criminal law.

Definition Restorative Justice (RJ)

- Restorative justice forms an innovative approach to responding to both criminal and challenging behaviour that places the healing of damage done to relationships and people ahead of and above the need to assign shame and impose punishment (cf. Hopkins 2002: 144 quoting Wright 1999).
- Is RJ sufficiently transformative? Should we speak of "transformative" rather than "restorative" justice? (Zehr 2011)
- Walgrave (2008) argues that RJ does indeed seek to change unhealthy relationships and forms a pathway for wider social transformation.

Central priorities according to H. Zehr

The predominant mainstream c.j.s.

- Which norm / law has been violated?
- Who was the offender?
- Which sanctions are appropriate for him/her?

Restorative Justice

- Who has been victimized?
- Which negative consequences must be addressed?
- How and by whom can the given situation be healed?

Be sure to think along

- What social circumstances facilitated the harmful behaviour?
- What structural similarities are there between the event under discussion and comparable events?
- What measures can prevent future occurrence?

Essentials of Restorative Justice

- Voluntariness (see EU-Directive 2012/29)
- Ownership instead of mere Partizipation (Lifeworld orientation)
- Human rights orientation
- Transformation and Responsibility
- „victims“ and community on an equal level with „offenders“
- A bottom up approach; Braithwaite (1994) writes about Demokratisation of social control
- Future orientation and peacemaking (RJ aims at „social peace“, not just peace of law)
- Third way, no new form of treatment!

SCHRIFTENREIHE

Restorative Justice

Täter-Opfer-Ausgleich & Konfliktregelung

01

Otmar Hagemann

Restorative Justice

Heilung, Transformation, Gerechtigkeit und sozialer Frieden

Gibt es für die notwendige Transformation unserer Gesellschaft eine Theorie, die sozialen Frieden anstrebt und Menschenrechte in den Mittelpunkt stellt? Im vorliegenden Buch verdeutlicht Otmar Hagemann, der sich als Soziologe, Viktimologe und Kriminologe versteht, sein Konzept der heilenden Gerechtigkeit (Restorative Justice) gleichermaßen als Theorie, Paradigma und Philosophie auf dem Weg zu einer „Restorative Society“. Der Begriff stammt von deutschen Theologen, wird heute häufig als Alternative zur strafrechtlichen Konfliktbearbeitung oder als dritter Weg zwischen Strafe und Behandlung in modernen Gesellschaften verstanden, sollte aber möglichst als Konzept auf allen Ebenen aller Lebensbereiche angewendet werden, in denen problematische Situationen bestehen oder entstehen. Insofern können uns indigene Kulturen, die häufig nicht diesen Begriff benutzen, aber die damit gemeinten Werte und Prinzipien traditionell umsetzen, als Vorbild für nachhaltige, zukunftsweisende soziale Umgangsformen in Konfliktsituationen dienen. Der vorliegende Band bringt Ergebnisse der ca. 35-jährigen intensiven wissenschaftlichen Auseinandersetzung des Autors mit dem Thema Gerechtigkeit und sozialer Frieden ans Licht - insbesondere in Zusammenhang mit strafrechtlich relevanten Konflikten, aber auch darüber hinaus.



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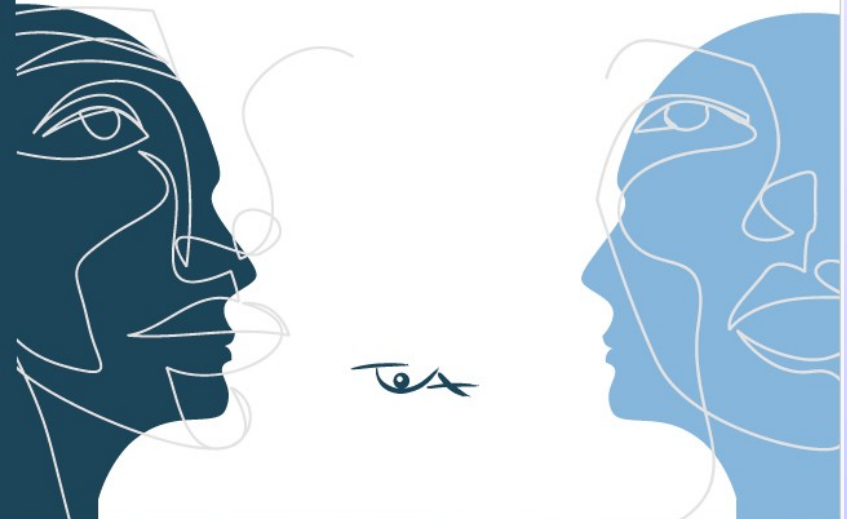
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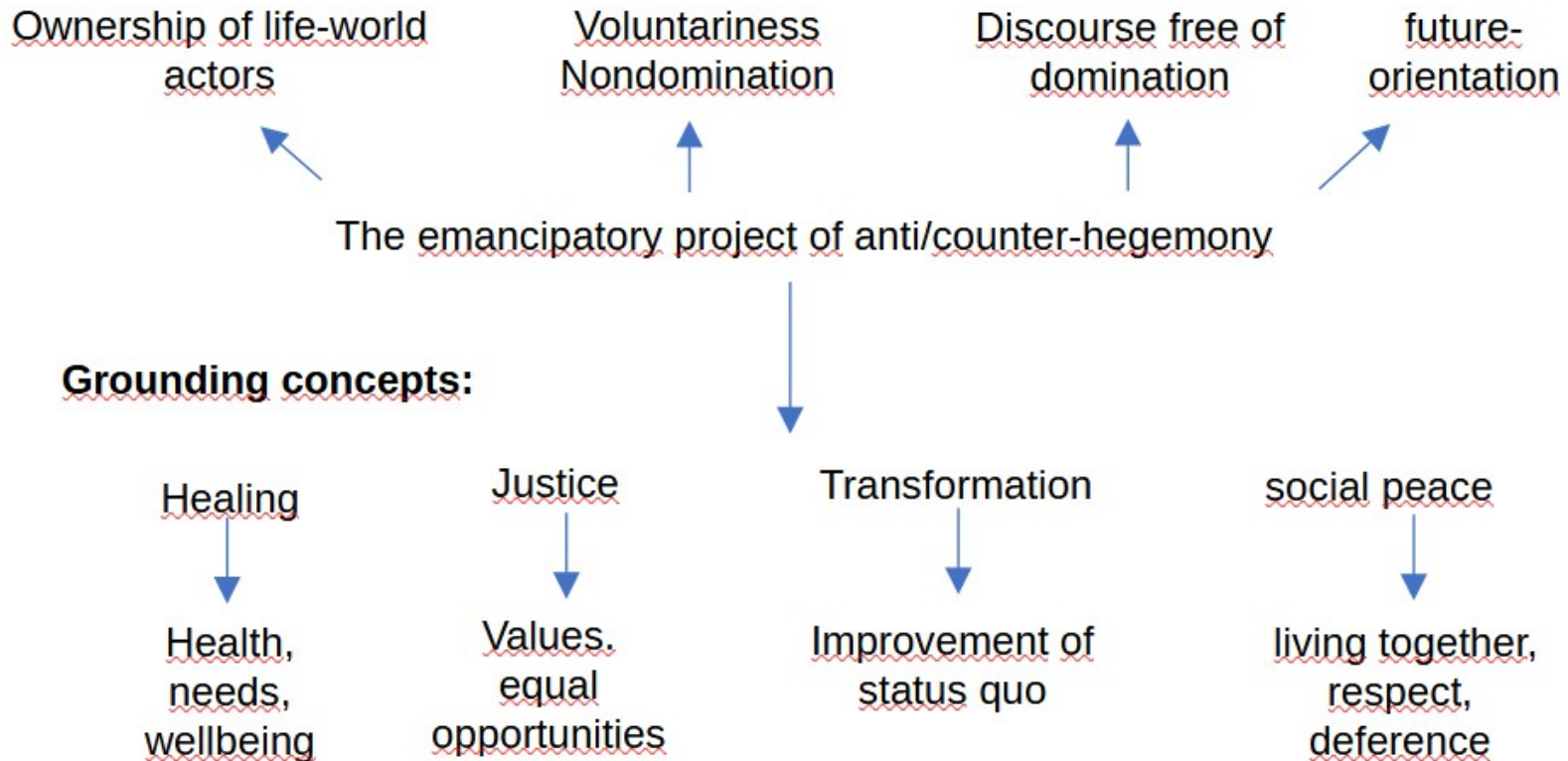
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Elements of Restorative Justice Theory



Three important questions (according to Pointer 2021)

“The understanding of the ritualistic features of RJ ... also created a framework through which to speak to three prominent questions in the RJ field.

First, how is the personal and relational transformation apparent in the RJ process achieved?

Second, can RJ have a normative impact that satisfies the wider public, particularly in comparison to the criminal trial?

And, **third**, given its primary focus on making amends at an interpersonal level, does RJ routinely fail to address larger, structural injustices?” (Pointer 2021: VIII)

three ritual functions

normative → safety + security,

transformative → significant + sustainable change and

proleptic → challenge status quo by envisioning and creating a different societal future = “**restorative society in miniature**” (Pointer 2021: 4)

According to Karp (2013: 45) conflict settlement focuses on repairing the harm and building trust.

There are neither trust-building nor peace-building activities in court. → „blame game“ Garfinkel

On the contrary, RJ procedures involve actions that demonstrate commitment to the community.

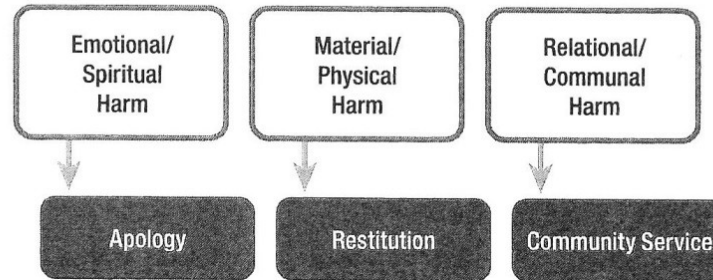
Social harm and individual victimization of the actions in question are explored and discussed. Individuals are able to demonstrate understanding → Pointer + Braithwaite

Another interactive part

Please identify the harms caused by activities of the “Last Generation”

- Blocking roads by sticking themselves to it
- Interfering in air traffic by entering airports/airfields
- Attacking art work

Three (six) forms of harm and possibilities for restoration / making good



Apology guidelines

"An apology is a good way to have the last word."

Author unknown

Apologies are expressions of remorse and the willingness to take responsibility for a transgression. They must be sincere if they are to be taken seriously. Apologies are an important way to repair community relationships and restore trust between parties. When apologies are assigned as a sanction, they should be written (not verbal) and approved before sending to a harmed party.

Karp 2013: 40

Five steps of restorative dialogs

1. Active listening, hearing the narrative: what happened?
2. Key moments, thoughts and feelings: what were you thinking? what were you feeling?
3. Ripples of harm: who has been affected? How have they been affected? What has been the hardest part for each person?
4. Needs: What do you need to feel better?
5. Ways forward: What needs to happen to move things forward?

The concept of a Restorative Society according to J. Boston (2007: 321)

- „Restorative Society“ should be seen as an organisational principle for finding answers to conflicts within society.
- It can link the separate, but related, developments in restorative justice and restorative practices that have been occurring in a growing number of policy areas
- to build a **good society**, which
"will be one where there is a genuine quest, across the many and varied fields of human endeavour, to restore or rebuild positive relationships and sound social structures, whenever such relationships or structures have been harmed or damaged in some way ...".

Restorative Cities

- In Hull, England (2012: 257000 inhabitants) by 2012, more than 5000 citizens had been trained in RJ procedures or familiarised with the basic philosophy (cf Wachtel 2012; Hull Centre 2012).
- The Centre for Restorative Practice in Hull sees successful sustainable development on the way, which is already reflected in improved social relationships.
- Various other cities in the meantime: Bristol, Canberra, Como, Lecco, Leuven, Mentana, Palermo, Tempio Pausania, Tirana, Vancouver, Whanganui, Wroclaw (cf. Patrizi & Biffi 2019; European Forum for Restorative Justice (2023). A Journey Around Restorative Cities in the World. A Travel Guide. Leuven.

Conclusion

- Most lawyers and politicians – representing hegemonic powers in our societies – but many ordinary people, too, look at the “Last Generation” from the perspective of criminal justice → then the activists’ behavior would be criminalized.
- Looking from a critical/anti-hegemonic perspective of people concerned about the environment, air pollution and destruction of “Mother Earth” – thus including many indigenous peoples – a restorative perspective is needed.
- Objectively, dialogs are needed. It seems that the activists are acting on behalf of all victims of “the system”.

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Thank you for your participation!

Cartoon 13.2: I always wanted us to share it...



Wallis (2014: 172)

Hopefully I did not cause suffering but have inspired to think differently! 😊