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BOOK REVIEW

EMOTION, POWER RELATIONS, AND RESTORATIVE JUSTICE: A REVIEW OF *COMPULSORY COMPASSION* BY ANNALISE ACORN¹

Beth Ribet²

I. INTRODUCTION

Compulsory Compassion: A Critique of Restorative Justice interrogates the concepts of love and justice, transformative encounter, and reciprocal healing presumed to typify the restorative justice movement. Restorative justice is one of a range of community-justice initiatives aimed at providing an alternative to punitive models of justice. Its mechanisms include victim-perpetrator dialogue, negotiated accountability and reparation, and communal involvement. The author draws from a range of literary and historical sources to construct her claims that restorative justice is ultimately detrimental to victims, exploitable by perpetrators, and grounded in cloying, emotionally deceptive rhetoric. One of the appeals of the text manifests in a theoretically creative application of literary criticism. For instance, Acorn juxtaposes lesbian feminist theology with themes of class exploitation in the work of Charles Dickens³ and considers the question of empathic identification in the context of Aristotelian models of

1. ANNALISE ACORN, *COMPULSORY COMPASSION: A CRITIQUE OF RESTORATIVE JUSTICE* (2004).

2. Beth Ribet obtained her Ph. D. from the University of California-Irvine in Social Relations, before becoming a law student at the University of California-Los Angeles. I would like to thank Frances Olsen, Lorraine Bonner, and Lara Stemple for helpful conversation about the politics and practice of justice.

3. See ACORN, *supra* note 1, at 100-19.

justice and Rousseau's conceptions of pity and compassion.⁴ However, theorists and advocates familiar with the variety of applications and conceptions of restorative justice will likely find the book to be methodologically flawed.

A chief problem manifests in Acorn's unqualified reductive representation of restorative justice as a supposedly uniform practice and ideology, grounded primarily in manipulative emotional appeal.⁵ This critique is often also compelling. Her arguments are most productive where they can be interpreted as a more precise engagement with certain authors or practices within the field of restorative justice, for instance in her discussion of the work of restorative justice author and advocate, Reinhold Neibuhr.⁶ However, her creative and impassioned literary analysis is undermined by a failure to clarify and adequately support some of her most basic assumptions. She provides little basis for her claims that restorative justice unilaterally requires victim forgiveness,⁷ always rests its efforts primarily on an imperative to mandate and instill love,⁸ and necessarily or always claims to thoroughly or dramatically transform the emotional and spiritual character of the perpetrator.⁹ Her frequent conflation of the writings of specific authors¹⁰ with not simply a universal ideology, but also the presumed practices of restorative justice in communities and organizations, is unfortunately deceptive.

For readers familiar with the practices of restorative justice, some of her critiques may, as noted, resonate with the premises of particular authors or organizations. However, the already informed reader is likely to react with some skepticism. As a supposedly comprehensive treatment of the core tenets of restorative justice, the book engages in a very cursory fashion with the range of interpretations and practices that actually characterize the movement, and neglects a more sustained engagement with its cultural contexts. To the uninformed reader, Acorn

4. *Id.* at 131.

5. For examples of the author's representation of restorative justice as an expression of manipulative sentiment, see *id.* at 78-98.

6. *Id.* at 163 (quoting REINHOLD NEIBUHR, LOVE AND JUSTICE: SELECTIONS OF THE SHORTER WRITINGS OF REINHOLD NEIBUHR (1967)).

7. See *id.* at 11-12.

8. *Id.* at 22.

9. See *id.* at 60-69.

10. I must note here that her choices are not exclusively, but somewhat disproportionately white, western, Christian authors, and omit virtually entirely any discussion of writings emerging directly from indigenous or non-western authors. For a list of her primary sources, see *id.* at 23.

offers a representation of restorative justice as naively utopian and grounded in “ersatz pieties.”¹¹ As noted, this characterization is un-tempered by any acknowledgement of the very wide-ranging cultural imperatives and orientations that inform the practices and interpretations of reconciliation and justice.

II. THREE CRITIQUES OF COMPULSORY COMPASSION: UNIVERSALISM, CLAIMS-MAKING, AND ABSENT MOVEMENT CONTEXT

Acorn does succeed, sometimes admirably, in raising some key, critical questions regarding the practicality of engendering dialogue and encounter between victims and perpetrators. In response to them, she pinpoints certain concerns that many feminists, critical legal theorists, and even advocates of comprehensive rehabilitation would pose about the attempts to circumvent traditional criminal justice models into practices of transformative encounter and presumably, reparation.¹² However, to elaborate on my introductory comments, I also argue that Acorn’s treatment of the philosophies and practices of restorative justice creates three critical analytical and representational problems. First, as noted, although her analysis is not limited to the practice of restorative justice in a single country or culture or in the conceptions of a particular author, she presents emotionality, the motivations of participants, and victim and perpetrator psychologies in universalizing terms. Ironically, universalism is a pattern she critiques herself relative to notions of “universal love.”¹³

To illustrate the point, it is conceivably a worthwhile project to discuss the South African Truth and Reconciliation Commission as sharing a conceptual relationship to restorative justice praxis between privileged victims of burglary and economically disenfranchised perpetrators of crime, in unspecified cultural contexts.¹⁴ However, doing so without a substantive analysis or even a nod to the cultural and historical imperatives that also distinguish these practices and the motivations of victims and

11. *Id.* at 160.

12. For instance, the author points out some of the possible pitfalls of the assumption that restorative encounter will likely elicit compassion and reconciliation between victim and perpetrator, and that if elicited these dynamics will automatically promote justice, particularly in the context of gendered power relations. *See id.* at 115-17, 142-58.

13. *See id.* at 27-45.

14. *See id.* at 146-47.

perpetrators creates a blurry conception of power dynamics in restorative justice. This conception obscures the potential to explore the political motives of participants beyond Acorn's analysis of misguided naïveté or "exuberance."¹⁵

Second, Acorn's analysis is philosophically enticing in the contemplation of grand questions of mercy and eros,¹⁶ spirituality and ethic,¹⁷ and optimism and zealotry.¹⁸ Nevertheless, she rarely makes clear where her discussions are primarily a philosophical exercise without empirical engagement, and where she intends to extend her discussion into the terrain of the practitioner. She does however claim that the book as a whole is a critique of the practice—not just the ideological underpinnings—of restorative justice.¹⁹ Given this intent, the strength of her argument is compromised by her particular bilateral approach. At some points, she operates at a level of psychological abstraction which her readers must attempt to hypothetically extend into practice. For example, the reader is often left to speculate about how precisely rhetoric of love, healing, and respect might result in coercive emotional performance.²⁰ In other instances, she bases her critique on a number of anecdotal accounts of restorative justice advocates²¹ and then makes counter-arguments that rely on speculation about the feelings and motives of the participants.²² At times, I tended to sympathize with Acorn's perspective and to share her concern about what victims and perpetrators might do, or be, or feel, when being asked to experience mutual compassion. However, it would be an error to accept her argument as thoroughly intellectually persuasive or grounded in exhaustive or even substantive exploration of the communities and organizations she takes as her target. A fair part of her argument seems to rest on a contention that she knows (better) what human nature really is and how (all) human psychologies truly operate.²³

15. For an illustration of her rhetoric in this regard, see *id.* at 17.

16. *See id.* at 99-119.

17. *See id.* at 28-30.

18. *See id.* at 60-73.

19. *See id.* at 159-63.

20. *Id.* at 56.

21. She has chosen these accounts with no explanation to the reader of how they are particularly representative or indicative of the movement.

22. For an illustration, *see id.* at 49-50.

23. For an illustration, *see id.* at 7-10.

To support this claim, she draws from works of classical western literature including the writings of Mark Twain, Jane Austen, George Eliot, and as mentioned, Charles Dickens, claiming that these authors speak more powerfully to the true nature of human emotion and motivation.²⁴ If the project of this book was re-framed as a proposed literary conversation between primarily Christian religious advocates of restorative justice and classical western literature about human nature, revenge, and love, my critique here would lack application. Bypassing an analysis of the socio-cultural implications of universalizing “true” human nature,²⁵ the problem here rests in the author’s presumption that standing alone, these discussions can constitute a sufficient analytical basis for making conclusive statements about restorative justice in practice. If Acorn is addressing any part of her comments to practitioners, even those with intra-movement and organizational critiques of aspects of restorative justice, it seems brazen to advance a condemnation of restorative justice based primarily on an argument that giving the perpetrator a chance at reform didn’t work with Pap in *Huckleberry Finn*.²⁶ I am by no means negating the validity of drawing from literature in order to examine its cultural influences,²⁷ or to illustrate particular anxieties and tensions between forgiveness and fairness. Acorn does the latter particularly effectively. However, she leaps from hypothetical arguments and literary illustration to fairly totalizing conclusions about practice. This maneuver will likely disturb readers attentive to rigorous methodology when undertaking organizational and movement analysis.

Third, the text does not at any point acknowledge the outgrowth—in the decade prior to the book’s publication—of “transformative justice”, a related and sometimes overlapping movement drawing from and also critiquing restorative justice.²⁸ It would certainly be legitimate for Acorn to choose to give singular attention only to classical restorative justice without substantively exploring subsequent variation. However, some

24. *Id.* at 24.

25. For an introduction to anthropological critiques of notions of human nature, see CLIFFORD GEERTZ, *INTERPRETATION OF CULTURES* (2000).

26. See ACORN, *supra* note 1, at 67-69; MARK TWAIN, *THE ADVENTURES OF HUCKLEBERRY FINN* (1885).

27. Acorn correctly notes that some restorative justice authors do so as well, and grounds her critique partly in response.

28. See Karlene Faith, *Transformative Justice*, http://www.rapereliefshelter.bc.ca/issues/transform_justice.html (last visited June 26, 2006).

minimal acknowledgement and explanation of her analytical direction would have been more satisfying to readers familiar with the movements in question. The more pressing issue lies in Acorn's critique of restorative justice in a partial vacuum, referenced only relative to traditional retributive justice.²⁹ At points, her use of adjectives and aspersions directed at restorative justice advocates approaches the level of name-calling, involving continual characterization of her targets as "dewy-eyed", "culpably sentimental", "new age", "devout practitioners . . . striking . . . inauthentic pose(s) . . . and phony posture(s)," and the like.³⁰ The reduction of alternatives to retribution to the terrain of the hopelessly naïve or the apologist for perpetration leads to the apex of her argument for her own vision of an "alternative utopia" based on a kind of reformed version of retributivism.³¹

In this vision, she does not hesitate to explain that "the bad guy getting skewered can still potentially be a very good thing."³² Although she explains that prison systems should be more effective in practicing rehabilitation and should preclude routine sexual violence against inmates, she argues that they must "inflict suffering on offenders as a matter of justice."³³ If Acorn's agenda is simply to join the company of such classic retributive legal theorists as Herbert Morris,³⁴ then she is certainly taking a well-established, legitimate position within legal scholarship. However, the foundation of her argument is that retribution is not simply right in itself, but must be understood as the correct alternative to its only foil, restorative justice. It is here that her omission of transformative justice from the conversation is particularly glaring, precisely because she is characterizing the presumed sole alternative to retribution as so outrageously romanticized and uncritically hopeful.

While advocates of transformative justice share some of the strategic mechanisms and practical goals of restorative justice, transformative justice has emerged through the organizational work of advocates who are often more critical of forgiveness, vic-

29. In her epilogue, she concludes the book with a strict binary opposition, de-crying both alternatives as negative, but ultimately choosing the retributive path as preferable. See ACORN, *supra* note 1, at 163-64.

30. See *id.* at 40, 92, 160, 162.

31. *Id.* at 161.

32. *Id.*

33. *Id.*

34. See HERBERT MORRIS, ON GUILT AND INNOCENCE: ESSAYS IN LEGAL PHILOSOPHY AND MORAL PSYCHOLOGY (1976).

tim-perpetrator power dynamics, and focused on communal accountability for enacted social change, with less of an emphasis on reconciliation.³⁵ Acknowledgement of this movement would virtually negate the binary opposition on which Acorn relies in order to portray retribution as so desirable and necessary from the perspective of victims' rights. She could certainly have taken on a critical position relative to transformative justice as well, but to do so carefully would make it even more difficult to claim that advocates of alternatives to retribution cannot be so easily collapsed into generalized and stereotypical representations of religious crusaders or new-age zealots. Given that Acorn has been so energetic and impassioned in these representations, and given that transformative justice is now a well-established subject in legal literatures³⁶ pre-dating the publication of this text, defenders of a range of community justice initiatives³⁷ could argue that the omission was probably intentional, and compromises the analytical credibility of the work.

For my own part, I found the omission frustrating. While very critical of the brutalities of incarceration, I simultaneously harbor feminist concern about victimization and power dynamics within restorative justice. Although the structure and content of her analysis was always interesting, I progressed through her arguments without ever getting to a thoroughly satisfying interrogation of the dilemmas inherent in alternate models of justice. This investigation might ideally have explored the differing priorities of victims relative to violence in and out of prison systems, the validity and range of conflicting emotional desires that may characterize trauma recovery and relationships to forgiveness and vengeance, and both the potentials and pitfalls of communal restoration praxis in the context of systems of globalization, white supremacy, and class stratification. The failure to examine restorative justice and its offshoots more thoroughly in organizational, practical and cultural contexts meant that some of the cri-

35. See Faith, *supra* note 28. See also Law Commission of Canada, *From Restorative Justice to Transformative Justice*, http://www.lcc.gc.ca/research_project/justice-en.asp (last visited June 26, 2006).

36. See, e.g., MICHAEL TONRY & ANTHONY N. DOOB, *CRIME AND JUSTICE: A REVIEW OF RESEARCH* (2004) for relevant discussions of variations of restorative, transformative, and community justice.

37. Although the term "community justice" is not synonymous with restorative or transformative justice, it references movements who tend to prefer restoration to punishment, given widespread failures in penal institutions. See Adriaan Lanni, *The Future of Community Justice*, 40 HARV. C.R.-C.L. L. REV. 359 (2005).

tiques I was most receptive to seemed under-developed, despite her complex and interesting engagement with philosophical and literary sources. In order to examine these criticisms of *Compulsory Compassion* more thoroughly, I turn now to a discussion of the components and specific organization of the text.

III. THE APPEAL OF RESTORATIVE JUSTICE

Acorn does not ever provide a specific definition of restorative justice, or delineate the limits of what she perceives as part of its activities. However, she does lay out certain components of the restorative process. These include the encounter between victims, perpetrators, and community members, the goal of reciprocal truth-telling, and the stated intent to simultaneously give victims more control in determining appropriate reparation or remedy, while also moving away from the ills of punitive criminal justice.³⁸ A primary and particularly interesting aspect of Acorn's discussion of restorative justice is that she centers its psychological appeal to participants and advocates.³⁹ She painstakingly dissects rhetoric related to healing, repair, love, and sentimentality. At the heart of this conversation lies her contention that these rhetorical devices compel because they offer a short-term escape from facing the irrevocable damage and harms often caused by crime, by promising a kind of cathartic access to love and peace.⁴⁰ She maintains that the promise turns out to be empty in the long-term, based on "unearned, easy, airbrushed emotions . . . seductive . . . in large measure, because it convinces us of the possibility of a miraculous shift from the terrible to the joyous."⁴¹

Acorn devotes significant and very thoughtful attention to what it may mean to victims and to communities to organize restorative encounters. She particularly argues that restorative justice taps into a kind of talk-show mentality of confession and disclosure. In contrast, the apparently stoic silences of many offenders in the context of the courtroom symbolize their anti-social and defiant relationships toward community. She explains that to the extent that this silence offends, a voyeuristic enthusiasm ensues when the perpetrator speaks, confesses, even cries in some cases, marking his re-integration into the social order and

38. See ACORN, *supra* note 1.

39. See *id.*

40. See *id.* at 78-98.

41. *Id.* at 90.

his accessibility to his audience, who are no longer denied speech and explanation.⁴²

Acorn also discusses the appeal to re-humanize perpetrators by calling on victims and communities to draw on the bonds of intimate or familial love, and to imagine the perpetrator were a loved one.⁴³ She points out that this presumes an easy transferability or malleability in the emotion of love which may not always manifest authentically. The author advances the important and astute argument that this kind of emotional pull obscures the realities of intimate violence, and will as likely tap into socialization to forgive and reconcile with battering spouses or partners, as it will a healthy context of communality and egalitarian intimacy.

She criticizes each of these dynamics, grounded in so-called "restorative optimism" on several counts.⁴⁴ First, as noted, she argues that the promise of catharsis is ultimately a set-up for victims, who receive momentary illusions of dramatic change, rather than sustainable experiences of justice, or transcendence of more profound loss or harm.⁴⁵ Second, she argues that the mere fact that perpetrators speak, and that perpetrators and victims encounter each other, should not be confused with respect. Rather she contends that the expectations attached to encounter actually tend to coerce an emotional performance of pseudo-respect or reciprocity.⁴⁶ Further, she notes that the pain or needs of perpetrators often seem to eclipse those of victims, reinforcing social inequity. Additionally, she argues that the advocates of restorative justice misrepresent a variety of dynamics such as offenders' desire for contact with victims of sexual abuse, interest in avoiding harsher punishment, or seeking after sympathy, in order to piece together a narrative in which the offender is transformed and healed by the encounter, presumably never to re-offend.⁴⁷

These critiques are compelling in that they speak to the intuitive anxieties many victims of crime and critics of oppressive power relations will have about the possibility for reconciliation, the emotional or even physical dangers involved in victim-perpetrator encounters, and the de-politicization of righteous rage in

42. *See id.* at 46-77.

43. *See id.* at 66-67.

44. *See id.* at 46.

45. *See id.* at 69-77.

46. *See id.* at 56-60.

47. *See id.* at 60-68.

the name of forgiveness.⁴⁸ If Acorn's contention were that this is what might go wrong, could happen, or has happened in various instances, particularly where organizations and practitioners have jumped into the process too optimistically, I would say her case is made.

However, she makes no such distinctions, qualifications, or clarification about whether she means these dynamics play out sometimes, often, or always, or between particular categories of victim and perpetrator, or based on any of the varied secular, religious, cultural, or trans-national approaches to restorative justice. The implication is certainly on the "always" and "every"; she almost never acknowledges any possibility that restorative justice advocates sometimes succeed in their aims, including those of creating a satisfying experience for victims. There is some irony in this given that she critiques restorative justice specifically for making sweeping claims about what victims really want.⁴⁹ It is not a stretch to come away from Acorn's analysis with the sense that she perceives victims who value restorative justice practices as dupes, who have not recognized their own real, vengeful needs. She refers to one such, bluntly, as suffering from "pathological kindness."⁵⁰

Here again, the analysis is also weakened by a failure to engage with transformative justice, a movement that includes advocates who could delineate the more specific pitfalls present in the practice of restorative justice, while still allowing for more precise contours of the reasons for various subjective successes and failures. For instance, Karlene Faith notes that in the context of sexual violence in or directed at indigenous communities, quite a number of Canadian First Nations women have spoken out about the failure of restorative justice to generate real accountability among perpetrators.⁵¹ While Faith's analysis certainly validates

48. For a particular compelling discussion of social injustice and rage see the recent works by Bell Hooks. Bell Hooks, *Killing Rage: Ending Racism* (1995). Hooks' recent scholarship on love, passion, feminism and justice also constitutes a relevant and theoretically intricate counterpoint to some of Acorn's contentions about human emotionality, power and victimization. See BELL HOOKS, *ALL ABOUT LOVE: NEW VISIONS*, (2000); BELL HOOKS, *COMMUNION: THE FEMALE SEARCH FOR LOVE*, (2003); BELL HOOKS, *FEMINISM IS FOR EVERYBODY: PASSIONATE POLITICS*, (2000); BELL HOOKS, *SALVATION: BLACK PEOPLE AND LOVE*, (2001); BELL HOOKS, *THE WILL TO CHANGE: MEN, MASCULINITY, AND LOVE*, (2004); BELL HOOKS, *PEOPLE AND LOVE* (2001).

49. See ACORN, *supra* note 1, at 47-48.

50. *Id.* at 117.

51. See Faith, *supra* note 28.

Acorn's claim that restorative justice can be horribly detrimental to (some) victims of (some) crimes, she acknowledges that the solutions advocated by these same victims do not entail a return to embracing a (viciously white-supremacist) punitive criminal justice system, but rather an exploration of transformative justice as a more cautious and politicized reinvention of restorative justice.

This point leads me to the concern that her discussion of the appeal of restorative justice, while generating some valid and partially persuasive observations, is as noted, presented in totalizing terms which preclude a more multifaceted recognition of the variations of victim motivation. I consider in contrast, Aurora Levins Morales' discussion of the basis for her belief in the necessity of helping perpetrators.⁵² Morales writes both as a cultural historian, and as a survivor of torture in childhood. The questions Morales engages are among the most difficult I can imagine. She speaks deeply to the gravity, longevity, and violence of cultural genocide, colonialism, and patriarchy and their consequences in the lives of children, women, survivors of poverty and class oppression, and peoples of color. She could not possibly, accurately be read as claiming that the pain of victims can be overcome easily or by some sort of mass-marketed, facile instacatharsis. However, she also gets to the heart of critiquing the social forces and spiritual annihilation which contribute to the formation of perpetrators. She further explores the social demonization of particular symbolic and actual criminals, in order to obscure the role of those forces in setting the stage for victimization.

I reference Morales in this instance first, because she speaks as a victim of extreme violence. Second, she has clearly spent considerable time, use of her formal education, and participation in community political organizing in order to develop a politics of victimization and community healing. Third, she speaks to the reasons (some) victims may participate in restorative, or transformative, justice or at least lay claim to the ideals therein of love and justice as inter-related—other than denial, pathology, or communal coercion. I would in turn suggest to Acorn that complexity, rather than oversimplification, may inform the choice of some victims of violence to move away from a focus on revenge

52. See AURORA LEVINS MORALES, *MEDICINE STORIES: HISTORY, CULTURE AND THE POLITICS OF INTEGRITY* (1998).

towards individual perpetrators. Authors such as Morales advocate alternative remedies in the context of patterns of systematic, annihilating oppression which generate the social indoctrination of perpetrators.

Finally, relating back to Faith's points about indigenous criticism of restorative justice praxis,⁵³ I note that Acorn's discussion of appeal suffers from a lack of cultural engagement and specificity. Although to be more precise, in one instance she does devote a paragraph to the particular advocacy of restorative justice in indigenous communities.⁵⁴ However, this discussion is particularly disturbing, because in her contemplation of "The Aboriginal context,"⁵⁵ a term she uses to encompass a range of cultural and linguistic groups, not all of whom consistently identify with the term,⁵⁶ she comes to the conclusion that the embrace of restorative justice is grounded in rejection of the values of a "spiritually inferior" white culture and an anticipatory optimism that oppression is on its way out.⁵⁷ These are somewhat staggering generalizations, and are made with no citation to indigenous authors or texts, and reference no organizations or specific events.

It is certainly important to discuss the appeal of restorative justice in the context of racial oppression. However, Acorn seems to collapse this appeal down to the implication that indigenous or aboriginal communities are turning away from punitive justice and exploring restorative justice solely because white culture is "spiritually inferior", and restoration more traditional.⁵⁸ This discussion obscures the fact that the systems of incarceration inherent in retributive justice continue to devastate and brutalize indigenous communities and to manifest historically entrenched systems of domination.⁵⁹ She also fails to flesh out the possibility

53. See Faith, *supra* note 28.

54. ACORN, *supra* note 1, at 17.

55. *Id.*

56. Alice Walker notes that the term "aboriginal" marks the external designation of people who have suffered occupation and displacement at the hands of white Europeans. See ALICE WALKER, *IN SEARCH OF OUR MOTHER'S GARDENS* (1967). Although I am not suggesting that the term would offend or misrepresent all of the groups it is used to designate—the linguistic context of the term combined with its use here to create a singular representation deserves critical attention.

57. See ACORN, *supra* note 1, at 17.

58. Since there is no discussion or acknowledgement of the range of indigenous or aboriginal cultures, it is not clear whose traditions she references.

59. See LEONARD PELTIER, *PRISON WRITINGS: MY LIFE IS MY SUNDANCE* (Harvey Arden ed., 1999); *The Case of Leonard Peltier: Native American Political*

that for some communities and individuals, this reality may constitute as strong a basis for the appeal of community-based justice initiatives as any other. Such a recognition would not automatically invalidate a critique of restorative justice as an inadequate alternative. However, it would grievously undercut Acorn's attempt to build towards increased legitimacy of an Acornian revision of retributive justice as ultimately best for (all) victims.

It would also open up a crucial and intellectually intriguing avenue. Namely, how can communities dealing with systemic externally-imposed institutional oppression create successful internal mechanisms to deal with intra-communal violence and harms? And further, how can these mechanisms avoid surrendering any community members (even Acorn's so-called "bad guys") to a hostile and destructive system, without simultaneously sacrificing already fragile claims to victim's rights? This dilemma, grounded in a structural intersection of experiences and oppressions,⁶⁰ is of course the terrain that Faith acknowledges as the basis for communal exploration of transformative justice.⁶¹ Although I will not attempt to tackle any evaluation of the comparative efficacy of transformative justice or its distinctions from restorative justice in this critique, I note again that Acorn's decision not to acknowledge it constitutes a substantial missed opportunity, certainly for some of her readers.

IV. LOVE AND POWER RELATIONS

Related to her claim that encounter generates disingenuous interaction rather than respect, Acorn devotes a chapter to criti-

Prisoner, <http://www.freepeltier.org/> (last visited June 26, 2006); LUANNA ROSS, *INVENTING THE SAVAGE: THE SOCIAL CONSTRUCTION OF NATIVE AMERICAN CRIMINALITY* (1998); JULIA SUDBURY, *GLOBAL LOCKDOWN: GENDER, RACE, AND THE RISE OF THE PRISON INDUSTRIAL COMPLEX* (2005).

60. I find it useful in this instance to consider Kimberle Crenshaw's conception of "structural intersectionality", in which she details how overlapping dynamics of class, race, and gender, among others, can create a specific vulnerability, insight, and social disenfranchisement based on situated identities and social locations, dependent on the interaction of each structural dynamic. In this case, considering the situations of indigenous victims of violence requires attention to the particular bind created at the intersection of communal vulnerability to white supremacy and intra-communal stratification. See Kimberle Williams Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, <http://www.hsph.harvard.edu/Organizations/healthnet/WoC/feminisms/crenshaw.html> (last visited June 26, 2006).

61. See Faith, *supra* note 28.

quing notions of teaching love.⁶² She challenges conceptions of love as a decisional stance presented by religious (again, primarily Christian) authors who advocate reconciling “universal love” and justice.⁶³ She launches a critique of love-talk based on the presumption that it masks structural inequities, turns the anger or pain of victims into the presumed blockade to realizing justice, and ultimately leads to victim-blame or coercive reconciliation.

It is the lower-downs—victims of injustice—who are asked to act lovingly first. Trusting acceptance on their part is a prerequisite for the higher-ups to connect with their beneficence. A beautiful paradise of loving harmony is there for the taking if only the lower-downs will stop engaging in nasty and uglifying resistance. It is their agitating about injustice that deprives all of us of the heaven on earth attainable if they would just practice (younger) brotherly love with greater sensitivity. The perpetrator of injustice chastises the victim both for the victim’s failure to love and for the perpetrator’s own consequent inability to be loving the way he’d ultimately like to be.⁶⁴

This critique presumes a particular structural relationship between crime victims and crime perpetrators. She does give a few relevant examples in other parts of the text, for instance by talking about the relationship between hypothetical female rape victims and male rapists,⁶⁵ and a white police officer’s self-serving testimony at the South African Truth and Reconciliation Commission hearings.⁶⁶

However, in her concluding chapter, she shifts to the claim that “the perpetrators of crime are likely to occupy a lower socio-economic strata than their victims,”⁶⁷ and proceeds to detail that given this stratification, perpetrators will often be unlikely to sympathize with crime victims who have much more privilege than themselves. I am not fully persuaded by her argument about the prospective empathy potential of the disenfranchised,

62. See ACORN, *supra* note 1, 27-45.

63. *Id.* at 28.

64. *Id.* at 32.

65. *Id.* at 115.

66. *Id.* at 146.

67. See *id.* at 145. The author does not clarify here whether her reference to the “perpetrators of crime” as occupying a lower socio-economic status is only meant to reference those perpetrators who are processed through criminal justice systems—I would add, disproportionately due to racial and class stratification—or whether she considers the perpetrators of “top-down” crimes referenced in her earlier analysis of love to be less frequent perpetrators of crime. Some discussion of white-collar crime, corporate crime, military and governmental ‘crimes against humanity’, or even the definition of crime might have been helpful here.

although certainly it's useful that in this one instance she brings up the possibility of "the perpetrator" as someone without the ultimate social and political upper hand. Regardless, although there might be space to reconcile these two arguments and discuss the demographic and biographical diversity of perpetrators and victims, Acorn does not really do so. She rests her critique of love and compassion on the presumption that the victims of crime are victims also of structural disenfranchisement, and only considers the corollary possibility in order to negate the possibility of perpetrator identification, without reflecting back on her earlier claims.

This discussion illustrates my critique of a blurred and somewhat disjointed engagement with the power relations between victims and perpetrators. Considered in light of her 'skewer the bad guy' utopian retributive conclusion,⁶⁸ her very brief discussion of crime perpetrators as also disproportionately disenfranchised begs for a much more robust analysis. She does not claim, at least not usually, to be embarking on a project in which the poor, the marginal, youth, women and girls, or indigenous communities are presumably to blame for their conditions and should spend much more time in prison. Rather, her arguments are framed initially in terms of advocacy for the downtrodden, directed against perpetrators in power. However, the realities of punitive justice, which disproportionately target and abuse the socially vulnerable⁶⁹ doesn't seem to really disturb or complicate her analysis that perpetrators are perpetrators, who ultimately must pay in the interests of true justice.

This discussion also illustrates the problems with invoking examples from non-Western contexts, such as the South African Truth and Reconciliation Hearings, and then interpreting them within frameworks based on the works of Western authors and literary criticism. If her example of the racist and appalling statements of a white police officer justifying his practices of torturing black activists was indicative of the totality of the Hearings, I could not possibly fault her conclusion that the problems inherent in attempted reconciliation are too excruciatingly severe to tolerate. However, another omission in her analysis manifests in

68. *Id.* at 161.

69. For interesting discussions and theoretical introductions to social stratification and prison industrial complexes, see ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* (2003); MARC MAUER AND THE SENTENCING PROJECT, *RACE TO INCARCERATE* (1999).

the total lack of recognition that while the question of white accountability was certainly deeply charged and important to the proceedings, most of those giving testimony as perpetrators were not white police officers, but citizens falling into the colonial racial constructs of "black" and "colored."⁷⁰

The question of how to deal, as a newly liberated nation with trans-generational, cross- and intra-class, cross- and intra-color, cross and intra-gendered politics, practices, perpetrations, betrayals, survival choices, hierarchies, communal explosions, is immense and mind-boggling. This question can only be even peripherally contemplated by first acknowledging that the context is one in which the vast array of newly constituted citizens share a context of mass, systemic, long-term, extreme victimization.⁷¹ In this reality, there is no prospect of equating justice with 'skewering the bad guy'⁷² without presuming that systemic mass-victimization has little bearing on the question of whether an individual victim who has also engaged in some form of perpetration is simply, bad. My purpose here is not to launch a wholesale defense of the politics of truth commissions,⁷³ a tenuous, though engaging, prospect. Rather, I point out that reducing the discussion of restorative justice in South Africa to a "black and white" dichotomy of perpetrator/victim effectively fogs the intra-communal dynamics within the broader history of Apartheid.

Suppose Acorn had chosen to enliven her deployment of various western literary classics such as Twain, Dickens, and Austen,⁷⁴ by including one of the most renowned contemporary African novelists, Chinua Achebe.⁷⁵ In *Things Fall Apart*, Achebe first delineates the excruciating and ordinary communal dynamics involved in misogyny and marriage, domestic violence, the domination of children, neighborhood hierarchy, and gender stratification.⁷⁶ He is not sparing in his representation of the dy-

70. CHARLES VILLA-VILENCIO & WILHELM VERWOERD, *LOOKING BACK, REACHING FORWARD: REFLECTIONS ON THE TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA* (2000).

71. See Richard A. Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State* (Chris Arup, et. al eds., 2001).

72. See ACORN, *supra* note 1, at 160.

73. See PRISCILLA B. HAYNER, *UNSPEAKABLE TRUTHS: FACING THE CHALLENGE OF TRUTH COMMISSIONS* (2002), for a discussion of the dilemmas entailed therein.

74. See ACORN, *supra* note 1.

75. See CHINUA ACHEBE, *THINGS FALL APART* (1994) [hereinafter ACHEBE]. See also CHINUA ACHEBE, *GIRLS AT WAR* (2nd ed. 1977).

76. See ACHEBE, *supra* note 75.

namics of victimization as complex, temporally resonant in their consequences, and deeply entrenched. Nor are his constructions of victims or perpetrators simplistic. Although the power differences between them are significant, his perpetrators are not entirely unsympathetic. His victims are not entirely powerless. He then introduces the early moments of Nigerian-European colonial contact for the Ibo community and family he has taken as his focus, and conveys the relentless force with which existing social structures are eradicated and consumed, engulfing perpetrators and victims alike. A minimal discussion of Achebe, without any attempt to engage more specifically with literature emerging from the South African apartheid context, would still easily engender recognition that within African societies recovering from the atrocities of European colonialism, victimization is not mono-dimensional. Who is a victim, and who is a perpetrator, are rarely anything other than thorny and complicated questions.

Here again, the discussion might have been enriched by engaging with the transformative justice literature, since authors and analysts connected to this movement often engage with the complexity of violence within disenfranchised and victimized communities.⁷⁷ Leora Bilsky discusses the use of transformative justice politics within the Israeli state to deal with Jewish war criminals who collaborated in Jewish destruction during the Shoah.⁷⁸ In her analysis it becomes evident that confrontation of intra-communal crime, betrayal, and harm is critical, and can't be obscured by universalizing claims on Jewish identity politics. In this respect, Acorn would likely agree.

However, Bilsky also attends carefully to the incredibly contradictory and complex needs and challenges these events posed within Israeli identities, moving beyond questions of guilt and betrayal (both worthy topics in themselves). She ventures at least partially into the terrain of mass communal memory about externally imposed survival choices, the devastating social psychological consequences of anti-Semitism across generations, and the attachment to survival even of traitorous or, in Acorn's thinking,

77. See, e.g., LEORA BILSKY, *TRANSFORMATIVE JUSTICE: ISRAELI IDENTITY ON TRIAL* (2004); Julie Mertus, *From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society*, 14 *AMER. U. INT'L L. REV.* 1335 (1999); Erin Daly, *Transformative Justice: Charting a Path to Reconciliation*, 12 *INT'L LEGAL PERSP.* 73 (2002); Mark. A. Drumbl, *Collective Violence and Individual Punishment: The Criminality of Mass Atrocity*, 99 *Nw. U. L. REV.* 539, (2005).

78. See BILSKY, *supra* note 77.

"bad" Jews, in the context of memory of mass annihilation. Authors such as Achebe and Bilsky point to some of the reasons why victims may have feelings of culturally-grounded and charged connection and concern for perpetrators. While these attachments are certainly not often framed as "universal love", and also perilous if taken to excuse intra-communal victimization, they defy reduction into the binary oppositional framework of inauthentic universal love vs. righteously vengeful retribution. Acorn builds further on her discussion of love, and invites further discussion of the role of emotionality in practices and notions of justice, by exploring the politics of the erotic.

V. SEXUAL POLITICS, RAPE, AND JUSTICE

One of the more theoretically fascinating junctures in Acorn's work emerges in her analysis of eros and eroticization.⁷⁹ She veers away from engaging specifically with restorative justice authors and conceptions of love and forgiveness therein, and instead critiques the general notion of justice as a dynamic or concept that can be eroticized. Her project in doing so is to confront a perceived danger in attempting to associate not simply love, but erotic embrace, with justice or the restorative concept of "right-relation."⁸⁰ She particularly challenges Carter Heyward's work on lesbian eroticism and justice, asserting that Heyward is essentially engaging in "irresponsible" and "self-interested" promotion of lesbian sexuality by making claims on, and thereby damaging, notions of justice.⁸¹ I am troubled by the implications and consequences of suggesting that association with lesbian sexuality will damage justice. However, I acknowledge that Acorn is not making any explicit claim that lesbian sex is illegitimate—she states more specifically that there ought to be better means to legitimize it.⁸² And, she acknowledges that Heyward is not specifically discussing victim-offender relations. With these qualifiers, she argues that associating justice with erotic relation sets a trap for survivors of violence who want disconnection and the establishment of boundary, rather than reconciliation, with per-

79. See ACORN, *supra* note 1, at 98-119; CARTER HEYWARD, TOUCHING OUR STRENGTH: THE EROTIC AS POWER AND THE LOVE OF GOD (1989).

80. See ACORN, *supra* note 1, at 99.

81. See *id.* at 115-18.

82. *Id.* at 118.

petrators of violence. Her critique applies particularly to those forms of violence which rely on sexual violation or invasion.⁸³

Acorn argues more broadly that “sex is sex”, rather than justice or any other virtue. She contends that since patriarchal norms of marriage and hetero-normativity often associate sex with particular values or virtues, queer theorists and feminists could more productively focus on the deconstruction of any such relationship, rather than posing alternative versions.⁸⁴ Turning brief attention to the substance of Heyward’s argument, I note that Heyward is essentially arguing that loving and mutuality-based erotic expressions constitute a kind of energetic field or wellspring which can in part, help to sustain and inspire a relationship to social justice.⁸⁵ Heyward takes as her inspiration the work of Audre Lorde, whose writing on eroticism is based on a particular distinction between the erotic, an experiential life-force not limited to or ending at the borders of sexual expression, and the pornographic, or the reduction of relationship and satisfaction to a praxis of sexual and political domination.⁸⁶ Although Acorn mentions Lorde very briefly as a primary catalyst for Heyward’s work, I would have been interested in a more nuanced discussion of Lorde’s conception of eroticism. Lorde is in fact quite clear in distinguishing a lesbian or feminist notion of erotic power from the confines of coercive or patriarchal embrace.⁸⁷ As noted, the distinction between domination and eroticism is her central organizing principle.

Relative to Acorn’s contention that “sex is sex”, only, I note that her attention to sexual violence illustrates that in fact sex can be a profoundly devastating expression of injustice. Given this, it’s disturbing to consider that in Acorn’s schema, the only recognition of sex as other than value-neutral occurs in the context of extreme violence. Although there is certainly room to interrogate Heyward’s presumptions about the particular potentials of lesbian eroticism in the context of queer and lesbian community power relations and relationships to gender identity, I suggest that Acorn has been too quickly dismissive of the possibility that sex has a productive relationship to justice.

83. *Id.* at 116.

84. *Id.* at 119.

85. See HEYWARD, *supra* note 79.

86. See Audre Lorde, *Uses of the Erotic: The Erotic as Power*, in SISTER OUTSIDER (1984).

87. See *id.*

Feminist sociological scholarship addresses the significance of conceiving of a right to sexual autonomy and entitlement among girls and young women.⁸⁸ The belief that one has sexual rights represents a critical foundation in the empowerment of girls. These rights extend not only to the choice to refuse sex, but also to the right to experience sexual pleasure—to claim it from the position of sexual agent rather than as the vehicle for someone else's sexual gratification (i.e. a boyfriend). The critical point here rests on the idea that girls may experience increased sense of entitlement and right to gender equity in other non-sexual arenas, based in part on the experience that one's own physical and sexual satisfaction is valid, primary and important. This resonates with Heyward's arguments about power and mutuality, and Lorde's description of the erotic as life-affirming.⁸⁹

I agree with Acorn that a totalizing conception of justice as requiring or mandating reconciliation between victim or perpetrator would be horribly dangerous for rape victims. As noted earlier, I also believe her contention that all restorative justice praxis requires forgiveness or reconciliation as a necessary component of encounter is a sweeping misrepresentation of most restorative justice practitioners and theorists.⁹⁰ I am not entirely dismissive of her argument that participation in restorative justice could ever potentially feel "compulsory" or coercive, or engender pressure to forgive or reconcile, when considered in light of particular communal pressures to protect perpetrators. However, as discussed, Acorn continually constructs her argument based on the presumption that this is always, necessarily true. Relating back for a moment to my earlier discussion of victim motivation, I suggest that Acorn seems to underestimate the potential of many victims of crime or violence to be able to make informed, intentional choices.

Furthermore, there appears to be some slippage in her assumption that if we associate sex and justice, particularly in discussions of erotic choice and expression not limited to

88. See LOIS WEIS AND MICHELLE FINE, *SILENCED VOICES AND EXTRAORDINARY CONVERSATIONS* (2003); MICHELLE FINE AND LOIS WEIS, *CONSTRUCTION SITES: EXCAVATING RACE, CLASS AND GENDER WITH URBAN YOUTH* (2001) (a discussion of youth identities and power relations).

89. See HEYWARD, *supra* note 79; Lorde, *supra* note 86.

90. See, e.g., Mary Achilles and Howard Zehr, *Restorative Justice for Crime Victims: The Promise, The Challenge*, in *RESTORATIVE COMMUNITY JUSTICE: REPAIRING HARM AND TRANSFORMING COMMUNITIES* (Gordon Bazemore & Mara Schiff eds., 2001).

victimization, this will necessarily and inevitably negate the ability of advocates, mediators, and victims to assert sexual boundaries. Rape victims will then be essentially robbed of all defense from further victimizing encounters. This presumption follows only if her readers accept every one of her central premises as entirely accurate. Namely, victims are primarily or always coerced into participation, and then are required or pressured or bedazzled by beautiful rhetoric into a performance of forgiveness, and then are thrust into reconciliation which entails an implicit or explicit tinge of eroticism. I can at least imagine scenarios where this *could* be true, and I am sure some of the failure stories associated with feminist and indigenous experiential critiques of restorative justice⁹¹ might resonate with elements or the whole of it. Were I engaging in a critique of restorative justice as applied to encounters between parental perpetrators of child sexual abuse and their victims, this narrative might seem especially alarming and at least an obvious and legitimate danger. However, my concern rests again with Acorn's presumptions of totality.

Acorn advances a critique of restorative justice based on the presumption that emotional performance can be coerced. I thoroughly agree that this can happen. As noted earlier, the problem in this analysis lies in a leap from 'can' to 'will always'. She seems to assume that this case can be made by positing that restorative justice advocates are inherently oriented towards coercion, or that forgiveness and compassion are less in sync with human nature than righteous needs for vengeance. More empirical illustration might have assisted her project here, though I question whether a comprehensive exploration of practice could ultimately support this kind of sweeping generalization.

Acorn's analysis also seems to presume that love and forgiveness are particularly vulnerable to communal manipulation. I suggest that constructs and experiences of rage and vengefulness are no less assailable than those of love and forgiveness. I would argue that any emotional performance can conceivably become the locus of coercion or pressure. Considering the pressure that groups can put onto individual members to participate in vengeful or rageful scapegoating of ethnic others or perceived criminals illustrates the point. I question the assumption that ret-

91. As noted by Faith, *supra* note 28.

tribution draws from an emotional foundation which is somehow, more consistently authentic, or less corruptible.

I reflect once more on the continuum of motivations and relationships that victims of brutality, violence and oppression have to vengeance, to the possible decision to align with ideals of love, and to the relation of those ideals to justice. Alice Walker's "Only Justice Can Stop a Curse" articulates spiritual and political expression of grief, rage, and vengeful desire for the destruction of the oppressor, in the context of the threat of nuclear annihilation. The essay immediately came to mind, when I considered what was lacking in Acorn's schema of victimization and revenge. Walker writes:

When I have considered the enormity of the white man's crimes against humanity. Against women. Against every living person of color. Against the poor. Against my mother and father. Against me. . . . When I consider that at this very moment he wishes to take away what little freedom I have died to achieve, through denial of my right to vote. . . . Has already taken away education, medicine, housing and food. . . . That William Shockley is saying at this moment that he will run for the Senate of my country to push his theory that blacks are genetically inferior and should be sterilized. . . . When I consider that he is, and they are, a real and present threat to my life and the life of my daughter, my people, I think—in perfect harmony with my sister of long ago: *Let the earth marinate in poisons. Let the bombs cover the ground like rain. For nothing short of total destruction will ever teach them anything.* . . .

However, just as the sun shines on the godly and the ungodly alike, so does nuclear radiation. And with this knowledge it becomes increasingly difficult to embrace the thought of extinction purely for the assumed satisfaction of—from the grave—achieving revenge. Or even of accepting our demise as a planet as a simple and just preventative medicine administered to the universe. Life is better than death, I believe, if only because it is less boring, and because it has fresh peaches in it. In any case, Earth is my home—though for centuries white people have tried to convince me that I have no right to exist, except in the dirtiest, darkest corners of the globe.

So let me tell you: I intend to protect my home. Praying—not a curse—only the hope that my courage will not fail my love. But if by some miracle, and all our struggle, the Earth is spared, only justice to every living thing (and every-

thing is alive) will save humankind. And we are not saved yet.
*Only justice can stop a curse.*⁹²

I propose that Walker is touching on a critically relevant notion of justice. Justice can be understood as an aspiration and praxis which does not negate rage or the desire for vengeance. However, the realization of justice, in Walker's framework, willfully prioritizes global survival as the reason and basis for love. Walker's "Only Justice Can Stop a Curse" is one example of a literary source which politicizes notions of love, justice and healing in the context of global dynamics of oppression and resistance. My core frustration in reading *Compulsory Compassion* lies primarily with the author's framing of justice as if conceptions like these are non-existent, unduly sentimental or irrelevant.

In sum, Annalise Acorn's treatment of restorative justice reflects passionate literary engagement and poses a number of challenging questions for the advocates of various community justice initiatives. However, her own answers to those questions are less compelling. She grounds her arguments in overly casual generalization of theory, literary device, and practice as interchangeable, and neglects attention to the role of imperialism and racism in complicating constructs of perpetrator and victim. Further, for readers familiar with the range of community justice initiatives, her inattention to transformative justice literatures is noteworthy. This omission partially enables a more simplistic condemnation of restorative justice as a hopelessly idealized, na-

92. Alice Walker, *Only Justice Can Stop a Curse*, in *IN SEARCH OF OUR MOTHER'S GARDENS* 338-342 (1967). Acorn might question the relevance of this quotation, or argue that it supports her claims that victims really want vengeance. She does make the argument for instance, that often so-called peace-making is really a necessary submission for the purposes of survival, masking or burying a deeper desire for vengeance. I certainly don't dispute that this can and has happened.

I also imagine that she could claim that the use of retributive justice between individual perpetrators and victims for instance, is not comparable to the question of nuclear annihilation, since perpetrators ideally, could be put into prisons without presumable harm to their victims.

My primary point here is more that I believe angry, conscious, empowered victims of crime, violence, and oppression, embodied in this example by Walker, may make a thoughtful, valid and politicized decision to turn away from vengeance, while also being in touch with the desire for it as a necessary emotional and political experience. Further, as noted earlier, systemic incarceration is not without prospective negative, even devastating consequences for victims, including but not limited to those victims who are also criminals, due to the violence, exploitation, racism, and abuse that characterize the institution . . . utopian retributive visions aside.

ive, glamorization of forgiveness,⁹³ and further sets the stage for Acorn's un-tempered advocacy of vengeance-as-justice. Many of the victims she purports to defend are among those who are, or whose families and communities are, the most frequent targets of retributive criminal justice systems. Given this, Acorn's premises will undoubtedly occasion concern from within the feminist, victims' rights, and legal literary circles through which she locates her scholarship and claims to represent justice.

93. Not that I accept this characterization without exception relative to all the entailed practitioners, advocates and organizations who fall under the umbrella of restorative justice.