

Relationality Against Remoteness: A Political Theory of Restorative Justice
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We, in the United States and beyond, are living today through what might be deemed a crisis of justice. Political theorists have begun to ponder the obsolescence of the John Rawls' *A Theory of Justice* and the hegemonic political-philosophical project it inaugurated half a century ago.¹ In the legal sphere, as the institutional and ideological premises of postwar liberalism experience what Roberto Unger calls their period of “darkening,” their protocols of justice have begun to lose their legitimacy.² Disenchanted lawyers approach their work like “priest[s], standing in tedious embarrassment before cold altars... imprisoned in half-belief.”³ In the sphere of criminal justice, the philosophical rededication to retributivism of the 1970s has few zealous adherents remaining, even if no new dominant paradigm has meaningfully emerged.⁴ The concurrent political turn to hyperincarceration is more widely condemned, though most in the political mainstream cannot imagine an alternative.⁵

Justice as a practical, political ideal increasingly feels like an abstraction, or even an illusion—its invocation laced with uncertainty, irony, and ennui. And, to paraphrase Gramsci, a number of morbid symptoms have appeared out of this malaise. The rightist politics currently ascendant from Hungary to Brazil, India to Israel, and, the electoral defeat of Donald Trump notwithstanding, the United States, can plausibly be read as a pernicious outcome of the crisis

¹ Seyla Benhabib, “High Liberalism: John Rawls and the Crisis of Liberal Democracy,” *The Nation*, October 29, 2019, <https://www.thenation.com/article/archive/john-rawls-liberal-philosophy-review/>; Katrina Forrester, *In The Shadow of Justice*, (Princeton University Press, 2019).

² Roberto Mangabeira Unger, *The Critical Legal Studies Movement: Another Time, A Greater Task*, (Verso, 2015) 19.

³ *Ibid.*, 20.

⁴ Michael Tonry, “Introduction,” in *Why Punish? How Much? A Reader on Punishment*, ed. Michael Tonry, (Oxford University Press, 2011) 4-6.

⁵ Angela Davis, *Are Prisons Obsolete?* (Seven Stories Press, 2003) 9. I follow Loïc Wacquant in using the term “hyperincarceration” rather than the more common “mass incarceration” because the phenomenon in question has by no means affected the citizenry on a mass level; the “penal dagger” is highly targeted (Loïc Wacquant, “Class, race & hyperincarceration in revanchist America,” *Daedalus* 139, no. 3 [2010]: 78).

sketched above. Confronting and defeating this encroaching threat before it solidifies power to govern the coming period of global climate upheaval is no doubt a defining political challenge of this generation. At the same time, the recent uprisings in the wake of police killings of George Floyd, Breonna Taylor, and others remind us of the fascism that has long been with us, manifest in close link between state violence, white supremacy, and racial capitalism,⁶ a crisis which is as old as the modern world,⁷ and which, urgently as ever, demands radical change.

If Iris Marion Young is right that “the concept of justice is coextensive with the political,”⁸ then meeting this dual challenge—both the “current crisis” and the “ongoing” one, to borrow Andrew Dilts’s helpful distinction⁹—requires returning anew to the question of justice and rethinking its relationship to contemporary politics. Resources for this rethinking, both in theory and in practice, would seem to be at a premium. And yet, there has been little engagement between scholars of political theory and a promising alternative paradigm: restorative justice. With its emphasis on encounter, reparation, and social transformation,¹⁰ restorative justice poses a powerful challenge to practices of criminal justice—like our own—that are distant from stakeholders, harshly punitive, and narrow in scope. More broadly, in emphasizing concrete social bonds and empowering stakeholders to define and pursue the ends of justice, restorative justice reaches beyond criminal justice to challenge the logics of the liberal state as such.¹¹

⁶ See Alberto Toscano, “The Long Shadow of Racial Fascism,” *Boston Review*, October 28, 2020.

<http://bostonreview.net/race-politics/alberto-toscano-long-shadow-racial-fascism>.

⁷ Charles W. Mills, *The Racial Contract*, (Cornell University Press, 1997) 1.

⁸ Iris Marion Young, *Justice and The Politics of Difference*, (Princeton University Press, 1990) 9.

⁹ Andrew Dilts, “Crisis, Critique, and Abolition,” in *A Time for Critique*, edited by Didier Fassin and Bernard E. Harcourt, (Columbia University Press, 2019), 233.

¹⁰ Gerry Johnstone and Daniel Van Ness, “The Meaning of Restorative Justice,” in *Handbook of Restorative Justice*, edited by Gerry Johnstone and Daniel Van Ness, (Willan Pub., 2007) 5-23.

¹¹ Dennis Sullivan and Larry Tift, “Introduction: The healing dimension of restorative justice: a one-world body,” in *Handbook of Restorative Justice: A Global Perspective*, edited by Dennis Sullivan and Larry Tift (Routledge, 2008) 2.

This essay seeks to put restorative justice on the agenda of political theory as a provocation to think justice—and its relationship to politics—*anew*.¹² My approach is both interpretive and normative. It is interpretive in that I begin from organic descriptions and accounts of restorative justice, taking cues from the commitments that are implicit, if not always explicitly stated, in this material.¹³ However, I do not posit that restorative justice practice as it stands is an uncomplicated panacea that political theorists need only stop to recognize; its potential contributions must be clarified and discerned from a vast array of sometimes contradictory and/or problematic material. Therefore, my account is normative in that its source material is selective and the extensions it proposes are contestable. It reflects my *recommendation* for how restorative justice should be understood and practiced.

What, in our contemporary paradigms of justice, requires specific rethinking? The Rawlsianism and retributivism that—even if they do not materially guide our institutions¹⁴—still dominate many of our imaginations, are both committed to a form of strong individualism that tend to disavow the relational constitution of human life. Both ways of thinking imagine justice as a question of what is due to persons—goods to be distributed or sentences to be meted out—in virtue of facts about them as individuals. In purporting to rationalize the provision of justice, however, they neglect the concrete relationships that actualize it in lived reality. This abstraction, which I will refer to here as “the remoteness problem,” explains, I think, much of the stale air of

¹² I understand restorative justice throughout this paper in *conceptual* terms, which may be applied to some practices that, especially among prison-industrial-complex abolitionists, sometimes go by other names. such as “community accountability” or “transformative justice” (though I will claim later in this paper that the distinction some posit between transformative and restorative justice can be overcome). At the same time, I do not assert that all emerging, abolitionist alternatives are assimilable to “restorative justice,” or that they should be.

¹³ Amna A. Akbar calls this approach “imagining with social movements” (Amna A. Akbar, “Toward a Radical Imagination of Law,” *New York University Law Review* 93 [2018]: 413-414).

¹⁴ See Forrester, *In the Shadow of Justice* for an account of how present political structures have fallen out of fit with Rawlsianism. Likewise, American hyperincarceration has arguably been materially driven more by logics of incapacitation and mass disposability than by retributive commitments (See Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*, [University of California Press, 2007]).

disillusionment that hangs around talk of justice today. It operates simultaneously on two levels, mutually reinforcing and yet distinct: first, on the level of the *interpersonal*, it displaces and deadens the particular and irreducibly subjective aspects of justice, rooted in grounded relations of responsibility; second, on the *structural* level, it tends to reify an essential separation between the *institutions* that provide justice and the *individuals* that receive it, obscuring that those institutions are not unworldly forces but rather the coordinated activity of individuals, who could always reconstitute or dissolve them.¹⁵ In centering the experience and ready-to-handedness of justice, this critique of liberal justice operates at the *phenomenological* level, and also implicates wider concerns of democratic politics. It regards these aspects as *essential*, not merely ancillary; indeed, this paper is animated by a conviction that a salutary phenomenology of justice is itself part of the substance of what we owe to one another.

This critique of the liberal tradition, of course, builds on others. It shares the communitarian rejection of abstract individualism and context-independent justice. However, it sees *community* as another remote abstraction, and centers *relationships* as the relevant site of justice. Therefore, it retains an individualism, in “concrete” rather than “generalized” form,¹⁶ which can fall out of communitarianism entirely.¹⁷ Less complicated is its relationship with feminist criticisms of liberal justice, with which it is aligned and to which it is indebted; indeed, some have seen restorative justice as exhibiting a “feminist vision of justice.”¹⁸ One could

¹⁵ For an evocative, personalistic description of remote justice, see Judith Shklar’s reflections on Giotto’s *La Giustizia* (Judith Shklar, *Faces of Injustice*, [Yale University Press, 1990] 102-105).

¹⁶ Seyla Benhabib, “The Generalized and the Concrete Other,” in *Situating the Self: Gender, Community, and Postmodernism in Contemporary Ethics*, (Polity Press, 1992) 148-177.

¹⁷ For a similar departure from communitarianism, see Anya Topolski, *Arendt, Levinas and a Politics of Relationality*, (London: Rowman & Littlefield, 2015) 228-229.

¹⁸ Emily Gaarder and Lois Presser, “A feminist vision of justice? The problems and possibilities of restorative justice for girls and women,” in Sullivan and Tiftt, *Handbook of Restorative Justice*, 483-494; See also, Albert Dzur and Kay Pranis, “Conversations on restorative justice: a talk with Kay Pranis,” *Restorative Justice* 4, no. 2 (2016): 257-259; Anna Terwiel, “What is Carceral Feminism?” *Political Theory* 48, no. 4 (2020): 422-423; Brady T. Heiner

understand this paper, I think, as in keeping with Joan C. Tronto's project of a "feminist democratic ethics of care," with its parallel foils of impoverished relationality and impoverished democracy.¹⁹ Nevertheless, it is interested less in specific interpersonal care relations than in a more general *existential-phenomenological disposition of non-indifference*, a distinct valence of "care," descendent from Heidegger, that Tronto acknowledges but does not engage at length.²⁰ My focus is on the relational phenomenology through which positive orientations toward others—among them Tronto's "care"—may become internally meaningful and motivating.²¹

Restorative justice, I will argue, models a kind of democratic practice that can hope to overcome the remoteness described above. It does not do so, however, by way of neo-republican notions of non-domination, as one prominent theory has it. Instead, I develop its political-theoretical salience through the relational phenomenologies of Emmanuel Levinas and Hannah Arendt. I then posit that the foregoing discussion points to an "encounter theory of justice," which radicalizes the discourse theory of thinkers like Jürgen Habermas and Rainer Forst. An encounter theory of justice not only fosters an ideal to aspire to, but also, wedded as it must be to prison-industrial complex abolitionism, a *critical* principle to animate critique and action from within our crisis-ridden present.

Liberal Justice, Relationality, and Restorative Justice

To begin, it is useful to briefly recount the roots and basic terms of dominant prevailing logics of liberal justice. Rawlsianism and retributivism (at least in its contemporary form), found

and Sarah K. Tyson, "Feminism and the Carceral State: Gender Responsive Justice, Community Accountability, and the Epistemology of Antiviolence," *Feminist Philosophy Quarterly* 3, no. 1 (2017): 1-36.

¹⁹ Joan C. Tronto, *Caring Democracy: Equality, Markets, and Justice*, (New York University Press, 2013) 17, 29.

²⁰ *Ibid.*, 19, 48..

²¹ For a somewhat similar distinction, albeit with a more critical edge, see W. Wolf Dietrich, Roger Burggraeve, and Christ Gastmans, "Towards a Levinasian Care Ethic: A Dialogue Between the Thoughts of Joan Tronto and Emmanuel Levinas," *Ethical Perspectives: Journal of the European Ethics Network* 13, no. 1 (2006): 53-56.

their intellectual origins in a rejection of utilitarianism, the school of thought that locates normativity in consequentialist considerations of the “the greatest good for the greatest number.” As an alternative, Rawls famously proposed to build a theory of justice by imagining the contractual principles that would be agreed to in a hypothetical “original position” located “behind a veil of ignorance.”²² Such a theory distinguished itself normatively by securing a baseline guarantee of individual rights that utilitarianism could not promise.²³ Certainly, Rawlsian theory is not atomistic in all its aspects; it valorizes associational practices as a means to produce just subjects and sports a social account of self-respect, the attainment of which is “perhaps the most important primary good.”²⁴ However, in both cases, relationships are merely *instrumental*—either to the pursuit of justice or to the constitution of its core material—not essential to the concept itself, which retains an individualistic grammar.

At roughly the same historical moment, legal scholars and philosophers of law were beginning to question the utilitarian logic of punishment that had been dominant since at least the beginning of the 20th century, turning instead to more retributive models.²⁵ Mirroring the Rawlsian criticism, retributivists took utilitarian penal theorists to task for ignoring the rights of the punished.²⁶ To Herbert Morris, certain utilitarian theories of rehabilitation diminished the humanity of offenders by casting them as pathological, in need of “treatment” or “therapy” rather than as full agents entitled to the consequences of their choices.²⁷ Such an argument, centered on a “right to be punished,”²⁸ seems less bizarre when one remembers the nightmarish intersection

²² John Rawls, *A Theory of Justice*, (Cambridge, MA: The Belknap Press of Harvard University, 1999) 11.

²³ *Ibid.*, 24.

²⁴ *Ibid.*, 155-156, 409-414. Quoted material on 386. I thank Chiara Cordelli for making this point.

²⁵ Tonry, “Introduction,” 4. There were also important advances in utilitarian theories of punishment during this period, devoted more to optimally efficient deterrence than rehabilitative treatment. See Gary S. Becker, “Crime and Punishment: An Economic Approach,” *Journal of Political Economy* 76, no. 2 (1968): 169-217.

²⁶ Jeffrie Murphy, “Marxism and Retribution,” *Philosophy & Public Affairs* 2, no. 3 (1973): 220.

²⁷ Herbert Morris, “Persons and Punishment,” *Monist*, 52 (1968): 485-486.

²⁸ *Ibid.*, 476.

of medicine, penology, and norm-enforcement described by Michel Foucault in *Discipline and Punish*, which gave a critical genealogy of the same practices that the new retributivists sought to break from.²⁹ It was, of course, Jeremy Bentham, the founder of utilitarianism, who designed the “panopticon,” the supervisory device that is so central and evocative in Foucault’s analysis.

There was no doubt much to condemn in the utilitarian episteme, and I do not seek to resurrect it here. However, its correctives face challenges of their own. Rawlsianism and retributivism’s anxieties about utilitarian collectivity have seemingly found their end in vocabularies of justice that, at least at their core, leave little room for relationality. The question of what is owed to persons—what rights and/or punishments—is answered in the interaction between the transcendent values enshrined in institutions and facts about individuals—who they are and/or what they’ve done. But such a procedure elides that the world is not made merely of individuals and normative abstractions; people share the world with each other, and justice in its lived reality (or possibility) consists in their interaction.³⁰ Iris Marion Young puts this in elegant terms: “Rights are relationships, not things; they are institutionally defined roles specifying what people can do in relation to one another.”³¹

Both Rawlsianism and retributivism, then, seem at least partially beset by the two-sided remoteness problem mentioned above. Rooted in transcendent, abstract rationality, justice recedes from experience, sometimes by design.³² It remains remote from persons, its misrecognition as independent “thing” diminishing its felt value even in circumstances where it

²⁹ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, translated by Alan Sheridan, (New York: Vintage, 1995).

³⁰ For a similar point, see Jill Stauffer, *Ethical Loneliness: The Injustice of Not Being Heard*, (Columbia University Press, 2015) 20.

³¹ Young, *Justice and the Politics of Difference*, 25.

³² Kantian ideas about justice, in particular, would seem to depend on a strong separation between the subjective feeling/experience and the objective demands of reason. I thank Chiara Cordelli for making this point. For a fascinating reading of Kant that puts this into question, however, see Shalini Satkunanandan, “The Extraordinary Categorical Imperative,” *Political Theory* 39, no. 2 (2011): 234-260.

is deemed to be present.³³ At the same time, both paradigms presume justice is done *to* individuals from on high, by the state and/or other institutions of society's "basic structure;"³⁴ it remains implicitly outside of persons and only indirectly—through formal and relatively infrequent democratic processes, if applicable—within their spheres of agency.

Restorative justice—also, in its contemporary form, an artifact of the 1970s³⁵—departs sharply from this logic. An alternative paradigm for responding to conflict and wrongdoing that emphasizes guided encounter between harmed parties, harm-doers, and other stakeholders, as well as, ideally, broader reflection on the societal contexts that gave rise to harm, restorative justice "compels us to take the fact of relationship, of our connectedness, as our starting assumption."³⁶ Prominent prison-abolitionist organizer and educator Mariame Kaba connects her work on restorative justice with these wider commitments through a notion of "relationships" as a central "unit of interest;" if prisons "break relationships and people," restorative justice is "all about relationships," leveraged and repaired "in the context of harm."³⁷

³³ This may be the case even for liberal-egalitarians like G.A. Cohen who argue for the necessity of an "ethos of justice" to complement the Rawlsian focus on just rules (See G.A. Cohen, "Where the Action Is: On the Site of Distributive Justice," *Philosophy & Public Affairs* 26, no. 1 (1997): 3-30). While I endorse this criticism as far as it goes, it is not on its own sufficient to dispel concerns that justice will remain phenomenologically remote from persons. Individual subscription to an "ethos of justice," in Cohen's telling at least, seems to be merely the penetration into the psyche of abstract principles of justice that originate outside them, such that they affect everyday individual choices. Principles of justice, if they are not remote, should not only be subjectively affirmed but *verifiable in experience itself*, without depending on an independent standard.

³⁴ Rawls, *A Theory of Justice*, 6-10.

³⁵ Though the modern restorative justice movement dates back to the 1970s, some note its debt to long-standing practices of justice in various indigenous communities in North America and elsewhere. See Ross London, *Crime, Punishment, and Restorative Justice: From the Margins to the Mainstream*, (Boulder: FirstForumPress, 2011) 13-15.

³⁶ Jennifer J. Llewellyn and Daniel Philpott, "Restorative Justice and Reconciliation: Twin Frameworks for Peacebuilding," in *Restorative Justice, Reconciliation, and Peacebuilding*, edited by Jennifer J. Llewellyn and Daniel Philpott, (Oxford University Press, 2014) 18. See also Theo Gavrielides, "Some Meta-Theoretical Questions for Restorative Justice," *Ratio Juris* 18, no. 1 (2005): 98. Some restorative justice thinkers find inspiration in the Bantu concept of *ubuntu*, the idea that "a person is a person through other persons" (Desmond Tutu, *No Future without Forgiveness*, (New York: Doubleday, 1999) 31). See Dirk J. Louw, "The African concept of *ubuntu* and restorative justice," in Sullivan and Tiftt, *Handbook of Restorative Justice*, 161-173.

³⁷ Eve L. Ewing, "Mariame Kaba: Everything Worthwhile is Done with Other People," *Adi Magazine*, Fall 2019, <https://adimagazine.com/articles/mariame-kaba-everything-worthwhile-is-done-with-other-people/>.

This focus evinces a radical departure from the justice paradigms that dominate our time; “as a relational theory of justice, restorative justice challenges individualist-based notions of justice, including retributive, corrective, restitutive, distributive, and social.”³⁸

With this focus on relationality, restorative justice would seem a plausible corrective to the remoteness problem that besets liberal justice. However, the terms of its political-theoretical commitments remain to be adequately clarified and developed. It is to this task that I now turn.

From Neo-Republicanism to Relational Phenomenology

There has been at least one important previous effort within the academy to link restorative justice to concepts in political theory. Philip Pettit—collaborating sometimes with criminologist John Braithwaite³⁹ and others—has advocated influentially for restorative justice in terms of his neo-republican political philosophy, the centerpiece of which is an understanding of freedom as non-domination.⁴⁰ For Pettit, restorative justice is to be endorsed for its utility in upholding republican values in the sphere of criminal justice, avoiding dominating aspects of conventional systems while also mending interpersonal relations of domination. Indeed, this has proven to be an influential line of thinking; some take it for granted that restorative justice is “grounded in republican theory,” citing Braithwaite and Pettit as support.⁴¹

Does such a republican standpoint foster a concept of restorative justice capable of overcoming the remoteness problem? Superficially, there are signs that it might. Freedom as

³⁸ Llewellyn and Philpott, “Restorative Justice and Reconciliation,” 18. For a liberal critique of restorative justice, see Linda Radzik, “Making Amends for Crime: Restorative Justice and the Liberal State,” in *Making Amends: Atonement in Morality, Law, and Politics*, (Oxford University Press, 2009) 153-174.

³⁹ See, for instance, Philip Pettit and John Braithwaite, “Republicanism and Restorative Justice: An Explanatory and Normative Connection,” in *Restorative Justice: Philosophy to Practice*, edited by Heather Strang and John Braithwaite, (Ashgate, 2000) 153.

⁴⁰ Philip Pettit, *On the People’s Terms: A Republican Theory and Model of Democracy*, (Cambridge, UK: Cambridge University Press, 2012) 5.

⁴¹ Thalia González, “Reorienting Restorative Justice: Initiating A New Dialogue Of Rights Consciousness, Community Empowerment And Politicization,” *Cardozo Journal of Conflict Resolution* 16, no. 2 (2015): 461-462.

non-domination consists partly in its felt affirmation in the context of interpersonal relations. As Pettit writes, “You would not enjoy freedom as non-domination in a universe where there were no others... To enjoy this freedom presupposes relationships with others and consists in relating to them on a pattern that rules out domination.”⁴² This intersubjective component of freedom is affirmed by way of what Pettit calls the “eyeball test,” passed when “[persons] can look others in the eye without reason for the fear or deference that a power of interference might inspire; they can walk tall and assume public status, objective and subjective, of being equal in this regard with the best,”⁴³ language which is reprised in his work on restorative justice.⁴⁴ At the same time, the attention that Pettit’s conception of freedom pays to *domination* might figure to make structural relations of justice legible for critique, and potentially contestation and transformation, in a way that a liberal theory could not.

In the end, however, the neo-republican account of restorative justice lapses back into both of these difficulties. First, while neo-republican intersubjectivity is certainly far from solipsistic, its core remains a deeply individualistic one. To the extent that Pettit affirms the importance of relational experience, he does so *instrumentally*, as the best proving ground for his truly central value, the undominated freedom of the individual. Beginning from the freedom of the individual also occludes, I think, the dynamic notion of collective life posited by some restorative justice advocates. From the viewpoint of the freedom of the individual will, collective entities like the “community” or the “state” tend to figure as something alien—reified as assets or obstacles alien to the self.

⁴² Pettit, *On the People’s Terms*, 91.

⁴³ *Ibid.*, 84.

⁴⁴ McGeer and Pettit, “The Desirability and Feasibility of Restorative Justice,” 333.

In what follows, I propose to articulate and develop a political theory of restorative justice not by way of Pettit’s neo-republicanism, but by way of *relational phenomenology*—specifically, the work of Emmanuel Levinas and Hannah Arendt. In doing so, I participate in a recent effort to read Levinas and Arendt together,⁴⁵ contributing a particular form of institutional and political practice—restorative justice—that can be considered to contain their integrated insights. This choice of theoretical champions, in my view, is both more faithful to restorative justice as its theorists and practitioners presently imagine it, and better suited to an articulation of the paradigm that might provide salutary guidance in our present crisis of justice, addressing both prongs of the remoteness problem.

Perhaps the crucial feature of Levinas’s thought is” the “face” of the Other, encounter manifests a phenomenological “primacy of the ethical.”⁴⁶ It is by means of this face-to-face encounter—which is presented both as primordial event and a potential feature of contemporary human life—that language itself comes into being. The relation to the Other “is... enacted as conversation,”⁴⁷ where, in encounter, one “is called upon to speak.”⁴⁸ This ethical “proximity of one to the other, the commitment of an approach” is the “saying” that precedes the “said,” the

⁴⁵ See, for instance, Judith Butler, “Precarious Life, Vulnerability, and the Ethics of Cohabitation,” *Journal of Speculative Philosophy* 26, no. 2 (2012): 134-151; Sophie Loidolt, *Phenomenology of Plurality: Hannah Arendt on Political Intersubjectivity*, (New York: Routledge, 2018); Nathan Bell, “In the Face, a Right is There”: Arendt, Levinas, and the Phenomenology of the Rights of Man,” *Journal of the British Society for Phenomenology* 49, no. 4 (2018): 291-307; Topolski, *Arendt, Levinas and a Politics of Relationality*; Peter Schmiedgen, “Polytheism, Monotheism and Public Space: Between Levinas and Arendt,” *Critical Horizons* 6 no. 1 (2005): 225-237.

⁴⁶ Emmanuel Levinas, *Totality and Infinity: An Essay on Exteriority*, translated by Alphonso Lingis, (Pittsburgh, PA: Duquesne University Press, 2007) 79. Levinas tends to capitalize the word “Other” in his work, and I follow this convention here when I am using the word in his sense. That a connection might exist between Levinas and restorative justice is not a completely new thought. See Stauffer, *Ethical Loneliness*; George Pavlich, “Ethics, universal principles, and restorative justice,” in Johnstone and Van Ness, *Handbook of Restorative Justice*, 625; Walgrave, *Restorative Justice, Self-Interest, and Responsible Citizenship*) 85-86. Charles Villa-Vicencio, “Pursuing Inclusive Reparations: Living Between Promise and Non-Delivery,” in *Restorative Justice, Reconciliation, and Peacebuilding*, 201.

⁴⁷ *Ibid.*, 39.

⁴⁸ *Ibid.*, 69.

“saying” that is the “condition for all communication.”⁴⁹ Such an image of conversational encounter recalls the canonical form of the restorative justice circle, which, as Mariame Kaba writes, is oriented toward allowing all participants to be “seen.”⁵⁰ Kaba’s linguistic translation of the *experience* of seeing another across a circle— “Look at me, see me, I’m here and deserving of your care”⁵¹—recalls Levinas’s restatement of the “first word,” which is latent in the face of the Other: “you shall not commit murder.”⁵² Indeed, this relational-phenomenological understanding of ethics bears an obvious affinity with the relational understanding of justice we have seen to be typical of restorative justice advocates.

Moreover, just as restorative justice meetings yield forward-looking obligations, the Levinasian encounter with the face evokes a “responsibility” for the Other.⁵³ This responsibility, for Levinas, has a somewhat idiosyncratic meaning, at least as much descriptive as normative. Though Levinas himself has a tendency to muddle this distinction, “responsibility,” for him, refers not merely to a particular, present-tense exigency for interpersonal relations but also to a basic *form* of relationality that is “constitutive of human subjectivity as such.”⁵⁴ Subjectivity itself, for Levinas, is founded on a primordial “accusation” leveled at the self who, in “answering for everything and for everyone,” “exist[s] through the other and for the other.”⁵⁵ While the demands of such responsibility are no doubt harsh and austere, they are also, for him, the source

⁴⁹ Emmanuel Levinas, *Otherwise than Being, Or Beyond Essence*, trans. Alphonso Lingis, (Pittsburgh, PA: Duquesne University Press, 2013) 5-6, 48.

⁵⁰ Mariame Kaba, “Restorative Justice is about ‘Being Seen,’” *Prison Culture Blog*, June 29, 2014, <http://www.usprisonculture.com/blog/2014/06/29/restorative-justice-is-about-being-seen/>.

⁵¹ *Ibid.*

⁵² Levinas, *Totality and Infinity*, 199.

⁵³ *Ibid.*, 178.

⁵⁴ Robert Froese, “Subjectivity, Alienation, and Liberation in Levinas and Marx” (Doctoral Dissertation, York University, 2018) 42, https://yorkspace.library.yorku.ca/xmlui/bitstream/handle/10315/36642/Froese_Robert_B_2018_PhD.pdf?sequence=2&isAllowed=y.

⁵⁵ Levinas, *Otherwise than Being*, 112, 114. See, generally, *ibid.*, 99-129.

of justice itself. Justice, for Levinas, is not a formal “[theorem] to be demonstrated in a self-enclosed system,” to use Young’s derisive language for the liberal distributive justice paradigm;⁵⁶ rather, he writes: “*We call justice this face to face approach, in conversation.*”⁵⁷ Such justice is *experienced* at the core of subjectivity, even constitutive of such subjectivity and its flourishing. It is anything but remote.

The relevance of Levinas to restorative justice can be seen particularly starkly in a moment from Howard Zehr’s *Changing Lenses*, one of the crucial books in the restorative justice canon.⁵⁸ In criticizing the conventional, adversarial model of criminal law that he means restorative justice to depart from, Zehr argues that it fails to challenge the depersonalizing rationalizations that harm-doers often employ in order to justify the harm they do.⁵⁹ He cites the example of some burglars who, as they rob a house, “turn photographs to the wall” to avoid thinking of the victims⁶⁰ For Zehr, the restorative justice encounter inverts this procedure precisely; under its auspices, “faces should take the place of stereotypes,” for both victims and offenders.⁶¹ Moreover, Zehr’s notion of justice aligns with the Levinasian imperative to treat justice phenomenologically: for him, it “has to be lived, not simply done by others and reported to us... Not simply justice, but the *experience* of justice must occur.”⁶² Here, the face-to-face encounter is not merely a heuristic device to access and approximate an independent end, like Pettit’s “eyeball test,” but is instead *constitutive* of justice without recourse to abstraction.

Generative of such responsibility for the Other, restorative justice on a Levinasian account is allergic to the formal sterility that, to varying extents, plagues our two paradigms of

⁵⁶ Young, *Justice and the Politics of Difference*, 5.

⁵⁷ Levinas, *Totality and Infinity*, 71. Italics in the original.

⁵⁸ Kay Pranis, “Returning to the source.” *Restorative Justice*, 3, no. 3 (2015): 426.

⁵⁹ Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice*, (Herald Press, 1990) 40-41.

⁶⁰ *Ibid.*, 41.

⁶¹ *Ibid.*, 204.

⁶² *Ibid.*, 203. Italics in the original.

liberal justice and Pettit alike. Interpreting it through Levinas also has important implications for how it should be understood normatively. It allows us to avoid restorative justice's frequent practical dependence on specious—not to mention conservative—logics of what Madeleine Norman calls “moral accounting,” that is, the notion that “obligations are essentially quantifiable... and that the normative force of reciprocity demands that they be paid.”⁶³ Indeed, Levinas bemoans the “economic” conception of time in which justice reduces to compensation, where present benefit can redeem past suffering.⁶⁴ Rather than a specific material or moral balance, *what restorative justice, best understood, must seek to “restore” is this Levinasian phenomenology of responsibility for the Other*. This may *motivate* finite gestures of repair, but does not find its justice-value in them.

What of the structural side of the remoteness problem? Here, restorative justice might be thought to run into some difficulty. Citing frustration with restorative justice programs' frequent lack of attention to the socio-cultural contexts that may structure interpersonal harm, as well as their over-willingness to collaborate with, and perhaps be coopted by, the state's criminal legal system, some activists and scholars have begun to think and organize under the mantle of “transformative justice.”⁶⁵ Advocates of transformative justice often worry that restorative justice, in focusing excessively and naively on interpersonal harm, is too backward-looking, and thereby participates in the reification of present social conditions and the institutions that respond

⁶³ Madeleine Norman, “Accounting for Harm: Moral Economies of Justice and Repair” (BA Thesis, University of Chicago, 2020) 8, https://s3.amazonaws.com/pozen/system/ckeditor/attachments/438/Norman_BA_Thesis.pdf. For an evocative, though less developed, critique of restorative justice along similar lines, see Stefano Harney and Fred Moten, *The Undercommons: Fugitive Planning and Black Study*, (Minor Compositions, 2013) 63.

⁶⁴ Emmanuel Levinas, *Existence and Existents*, translated by Alphonso Lingis, (Duchesne University Press, 2001) 91-96.

⁶⁵ See Ruth Morris, *Stories of Transformative Justice*, (Toronto: Canadian Scholars Press, 2000); Josie Duffy Rice and Clint Smith. “Justice in America Episode 20: Mariame Kaba and Prison Abolition.” *The Appeal*, March 20, 2019. <https://theappeal.org/justice-in-america-episode-20-mariame-kaba-and-prison-abolition/>.

to wrongdoing within them.⁶⁶ Instead, transformative justice is constitutively outside of the state,⁶⁷ and “is premised on the idea that individual justice and collective liberation are equally important, mutually supportive, and fundamentally intertwined—the achievement of one is impossible without the achievement of the other.”⁶⁸ While Zehr has expressed his interest in “urging the field to be as transformative as possible,” such that the two terms—restorative justice and transformative justice—might blur into indistinction, he admits that, in practice, the transformativists who reject restorative justice have a point.⁶⁹ Restorative justice’s ability to respond to the structural aspect of the remoteness problem therefore hinges on the extent to which Zehr’s hopes for an integration of the two paradigms are not misplaced. Pettit, problematically, omits any consideration of such “transformation” from his discussion of restorative justice, and, as I’ve suggested, the individualism of his philosophy makes it a poor candidate to adequately account for it anyway.

I believe that Hannah Arendt—a critical phenomenologist like Levinas—can help us better theorize the transformative potential within the restorative paradigm. At its center is her notion of plurality, the idea “that men, not Man, live on the earth and inhabit the world.”⁷⁰ Like Levinas, she subscribes to a kind of essential relatedness of persons—their unwilled, common implication—and assigns special status to “speech” as a nexus between them. But whereas Levinas is interested in the ethical resonances of this relationality—largely in the context of

⁶⁶ Allegra McLeod, “Envisioning Abolition Democracy,” *Harvard Law Review* 132, no. 6 (2019): 1630-1631.

⁶⁷ Anna Terwiel identifies this near-absolute rejection of the state in transformative justice as a crucial factor that distinguishes it from restorative justice (Terwiel, “What is Carceral Feminism?” 431).

⁶⁸ Generation Five, *Toward Transformative Justice: A Liberatory Approach to Child Sexual Abuse and other forms of Intimate and Community Violence: A Call to Action for the Left and the Sexual and Domestic Violence Sectors*, June 2007, 1. http://www.usprisonculture.com/blog/wp-content/uploads/2012/03/G5_Toward_Transformative_Justice.pdf.

⁶⁹ Howard Zehr, “Restorative or transformative justice?,” *Zehr Institute for Restorative Justice* (blog), Eastern Mennonite University, March 10, 2011, <http://emu.edu/now/restorative-justice/2011/03/10/restorative-or-transformative-justice/>.

⁷⁰ Hannah Arendt, *The Human Condition*, (Chicago: The University of Chicago Press, 1958) 7.

dyadic encounters—Arendt focuses chiefly on their political import in the context of the broader world.⁷¹ Individuals achieve selfhood—distinctive membership in “the human world”—by means of “word and deed,” that is, by speech and action.⁷² Speech, in its highest, self-disclosive function transcends mere communication and contains a “revelatory” capacity to bring something new into the world.⁷³ While this novelty emerges from a speaker/doer, it is actualized by means of stories about the speaker/doer propounded within an “already existing” “web of human relationships,”⁷⁴ and founds new relationships as well.⁷⁵ It is this “sharing of words and deeds” that, for Arendt, constitutes politics.⁷⁶ And politics, for Arendt, is an essentially *transformative* activity; it is coextensive with “freedom,”⁷⁷ understood as the collective “human capacity to begin anew.”⁷⁸ Because this freedom eschews the “compulsion” of certain “rational procedures of validation,”⁷⁹ no institution or regularized practice justified solely in reference to remote “theorems” could resist it.

To what extent can restorative justice be conceived as a site of political freedom, understood in the above sense? While the “speech” that occurs in restorative justice dialogues may not always transcend the instrumentality of communication or produce durable stories, it seems plausibly to do so in some cases. We can see this if we conceive of harmed parties and harm-doers—the central participants in restorative justice processes—as plausibly engaging in a

⁷¹ See Ella Myers, *Worldly Ethics: Democratic Politics and Care for the World*, (Duke University Press, 2015), especially 51-84.

⁷² Arendt, *The Human Condition*, 176.

⁷³ *Ibid.*, 180, 178.

⁷⁴ *Ibid.*, 183-184.

⁷⁵ *Ibid.*, 190.

⁷⁶ *Ibid.*, 198.

⁷⁷ Hannah Arendt, “Introduction into Politics,” in *The Promise of Politics*, edited by Jerome Kohn, (New York: Schocken Books, 2005) 108.

⁷⁸ Linda Zerilli, “‘We Feel our Freedom:’” Imagination and Judgment in the Thought of Hannah Arendt,” *Political Theory* 33 no. 2 (2005): 160.

⁷⁹ *Ibid.*, 160, 164.

kind of self-disclosive act when they speak to one another about a harm.⁸⁰ For Arendt, the human impulse to disclose oneself seems implicitly linked to a refusal to be reduced either to an “inorganic object” or a mere animal: “Otherness in its most abstract form is found only in the sheer multiplication of inorganic objects, whereas all organic life already shows variations and distinctions... But only man can express this distinction and distinguish himself, and only he can communicate himself and not merely something.”⁸¹ This anxiety about dehumanization also animates Zehr’s description of the experience of being a victim of wrongdoing. He writes, “offenders turn victims into objects, into ‘things.’”⁸² Consequently, their recovery will demand that harmed-parties have “opportunities to express their feelings and their suffering” and also “to tell their stories. They need to have their ‘truth’ heard and validated by others.”⁸³ The same goes for harm-doers as well, who are also rendered mute, dehumanized as monstrous and made into “passive object[s] of state retribution and management” by the criminal legal system.⁸⁴ Justice requires “‘breaking the silence,’”⁸⁵ an effort that can plausibly be read in terms of Arendt’s concept of speech. Indeed, if one remembers Zehr’s aforementioned dictum—that, in restorative justice, “faces should take the place of stereotypes”—it becomes clear that the encounters it facilitates are orientated in part toward answering the question Arendt recognizes as animating speech and action: “‘Who are you?’”⁸⁶ Zehr’s vision of restorative justice, like Arendt’s acting/speaking subject, affirms “the ‘who’ in contradistinction to the ‘what.’”⁸⁷

⁸⁰ Sonali Chakravarti makes a similar point in her discussion of Arendt’s hypothetical attitude toward victim testimony in truth and reconciliation processes. See Sonali Chakravarti *Sing the Rage: Listening to Anger After Mass Violence*, (University of Chicago Press, 2014) 84.

⁸¹ Arendt, *The Human Condition*, 176.

⁸² Zehr, *Changing Lenses*, 52. See also *ibid.*, 25.

⁸³ *Ibid.*, 27.

⁸⁴ Heiner and Tyson, “Feminism and the Carceral State,” 15.

⁸⁵ Zehr, *Changing Lenses*, 28.

⁸⁶ Arendt, *The Human Condition*, 178.

⁸⁷ *Ibid.*, 179.

Understood as a site of self-disclosive speech, restorative justice dialogue can then be presumed to have world-building effects of the kind Arendt theorizes, especially in formats that involve stakeholders beyond exclusively harmed parties and harm-doers. It might provide stories that then pass among those present, reorienting broad outlooks toward the issues implicated by the event of harm in question. It might, as restorative justice practitioner Kay Pranis claims, build and refurbish communal relations so as to produce “positive community-building energy” around problems.⁸⁸ In such circumstances, events of harm both figure as and refer to what Ella Myers—drawing on Arendt—would call “worldly objects, those “common and disputed things” in care of which a democratic ethos can be forged.⁸⁹ Indeed, Ann Russo identifies commonalities between restorative justice practices to methods and 1970s feminist consciousness-raising practices, which “created powerful spaces for the collective sharing of experiences from which to develop political analysis and strategy.”⁹⁰ As Lisa Guenther speculates in a footnote, then: “Arendt’s account of natality as the capacity to begin again [and] her view of power as collective empowerment... offer interesting and compelling theoretical resources for a defense of restorative justice.”⁹¹ She might have added that this Arendtian restorative justice, pointing always to a “capacity to begin anew,” could be little other than transformative.

Read together, then, Levinas and Arendt provide a plausible and appealing account of what we might call “transformative restorative justice”—a vision of restorative justice that adequately answers the criticism of transformative justice advocates. One can see this integration

⁸⁸ Dzur and Pranis, “Conversations on restorative justice: a talk with Kay Pranis,” 261.

⁸⁹ Myers, *Worldly Ethics*, 14.

⁹⁰ Ann Russo, *Feminist Accountability: Disrupting Violence and Transforming Power*, (New York University Press, 2019) 120-121.

⁹¹ Lisa Guenther, “Political Action at the End of the World: Hannah Arendt and the California Prison Hunger Strikes,” *Canadian Journal of Human Rights* 4, no. 1 (2015): 41, n. 32. For a more complicated and ambiguous view of the relationship between Arendt and restorative justice, see Chakravarti, “The First Skeptic: Hannah Arendt and the Danger of Victim Testimony” in *Sing the Rage: Listening to Anger After Mass Violence*, 79-105.

exemplified, I think, in a story Kay Pranis tells about community-organizing using restorative processes, worth quoting at length:

The individual event creates a situation in which people come together—often out of fear, anger or frustration. But if you use a process like a circle, for people to initially talk about that particular issue, the process starts to build the relationships so that they become more committed collectively to the well-being of the whole.

A friend of mine did a circle once in Oregon where they were talking about placing a sex offender re-entry house... Following the way you do things in a circle, she started out by reading a children's story about these wooden creatures in the community and how some of them had stars and others had grey dots. The ones with the grey dots were more worn out, their paint wasn't as bright and they couldn't jump as high. She read this story and then she shared one of her grey dot experiences—something from her own life she felt shame about. And then she invited other people if they wished to talk about grey dots in their own lives. Then they moved to talking about the possibility of this sex offender re-entry house, and by the time they got to that part of the conversation they had established a very different framework. The group actually accepted the idea of this house in their neighbourhood.

In the process, an old man stood up and said, 'I had no idea so many of my neighbours were living in so much pain. It isn't just about where these guys are going to live but how are we going to take care of each other?' Out of an individual issue around this house, they sat and began to see each other as human beings who were in pain and that they had a responsibility as a neighbourhood to take care of each other. That is the kind of transformation that is possible.⁹²

While this story departs slightly from the standard restorative justice framework in that the harm event from which it begins does not revolve around a specific, interpersonal wrong or specific harmed parties and harm-doers in the regular sense, it nonetheless demonstrates something of the plausible logic of any restorative justice practice, and, more generally, what we might call "restorative politics:" the broader mode of democratic practice modeled in transformative restorative justice. First, its worldly character is immediately clear. The question of the placement of the re-entry house "creates a situation in which people come together" around an object of common concern in a kind of auxiliary *polis* to speak about the character of their common world. Within this *polis*, individuals are invited and empowered to disclose

⁹² Dzur and Pranis, "Conversations on Restorative Justice," 262.

themselves in particular ways through speech—here, by sharing “gray dot experiences,” or by speaking about “gray dots in their own lives.” These disclosures take the form of stories, which reverberate through the “web of relationships” that inheres among those gathered, actualizing their content and its world-shaping potential.

At the same time, this world-building remains animated by a specifically interpersonal and ethical force. The circle is preceded and brought about by concern for the “fear, anger, and frustration” of individuals, without which it would have no reason to exist. While care for the world certainly brought the circle into being—indeed, as Ella Myers argues, responsibility for Others is dependent on worldly factors to enable and encourage it⁹³—it did so *for the sake* of the Others who would benefit therefrom; Moreover, in the circle itself, participants “sat and began to see each other as human beings who were in pain and that they had a responsibility as a neighbourhood to take care of each other”—a plausible distillation of what Pranis refers to elsewhere as “the restorative impulse.”⁹⁴ This image of responsibility renewed in the face-to-face presence of others has an unmistakably Levinasian tinge, even as this responsibility is *fulfilled* by worldly means, by an appropriate settlement to the question of the re-entry house. Participants oscillate between concern for the Other and concern from the world in mutually-reinforcing succession, another relationship this paradigm seeks to restore.

An Encounter Theory of Justice

So far, I have sought to describe a certain vision of transformative restorative justice and the “restorative politics” that might flow from it, but I have had little to say about justice itself. Indeed, there may be some concern that while restorative justice may offer compelling thinking

⁹³ Myers, *Worldly Ethics*, 145.

⁹⁴ Kay Pranis, “The Restorative Impulse,” *Tikkun* 27, (2012): 33-34.

about interpersonal ethics, worldly politics, and their interlocking phenomenologies, it is of little use to thinking about *justice*. In my view, however, transformative restorative justice does not abandon justice by attending to these other spheres. Rather, it insists on their irreducible connection.

Here, then, I attempt to delineate specific principles of justice from the foregoing discussion. I propose the following: we might say that *I am treated in a restoratively just manner to the extent that I am unobscured and publicly generative of responsibility to others and that any abstraction from this immediacy is justifiable in reference to the very responsibility it instantiates*; these, we might say, are my “rights” of restorative justice. *I am acting in a restoratively just manner to the extent that I relate to Others in a way that is unobscured and publicly generative of responsibility, and can justify abstraction from this immediacy in reference to the very responsibility it instantiates*; these, we might say, are my “duties” of restorative justice. By “unobscured,” I mean present, in “appearance” and with a “face,” without the intervening force of totalizing abstractions—prejudices, social-symbolic distinctions, etc.⁹⁵ Importantly, while the classic images of the Levinasian and restorative justice encounters involve physical proximity, with parties interacting within space that they share, unobscured encounter as I imagine it here need not be physical; the Other need only be phenomenologically present in some sense. By “generative of responsibility,” I mean capable of imposing responsibility in the sense Levinas describes, of making salient an obligation that is part of the very structure of one’s subjectivity. By “publicly,” I mean responsible with a view to worldly context and within a plural existence, a responsibility capable of being experienced and/or acted upon by way of speech and action, and articulated with reference to worldly objects. Together, these principles

⁹⁵ See, for instance, the link Arendt draws between racial categories and the disavowal of responsibility in *Origins of Totalitarianism* (Hannah Arendt, *Origins of Totalitarianism*, (New York: Harcourt, 1994) 207, 239, 301.

amount to a right to involvement in the kind of “restorative politics” outlined at the end of the previous section.

I do not claim that these criteria are *sufficient* for justice; there is always the possibility of shrinking from or lashing out against perceived responsibility,⁹⁶ and persons will still require independent modes of analysis to approach the concrete injustices that face them. They are also exceptionally demanding, perhaps unfulfillable in full (though this makes them no less valid). What I want to claim, however, is that any set of arrangements or actions is capable of being *verified* as just in everyday experience, not just rational reflection, only to the extent that these principles hold. In other words, seriousness of the remoteness problem and the fulfilment of these principles of restorative justice are inversely proportional.

Though I phrase them partially in terms of individual duties, adherence to these principles is not wholly given to the individual will; again, salutary encounter with Others depends on a pre-existing worldly context friendly to it. Therefore, these principles also pertain to states and other institutions that may make up what Rawls called the “basic structure.” While one should not, on penalty of reifying the remoteness I have sought to problematize, make an ontological distinction between individuals and these structures, an analytic distinction is appropriate given present political realities.

Institutions of the basic structure should seek to *create the conditions* whereby the relational rights and duties specified above can be honored and fulfilled. In this sense, this understanding of justice is not purely procedural, though its substantive component derives ultimately from demanding exigencies of its procedural component. Substantially, it is likely to involve, among other things, more powerful guarantees of the material means of life, so as to

⁹⁶ For Levinas, exposure to the “face” does not definitively preclude violence; indeed “violence can only aim at a face” (Levinas, *Totality and Infinity*, 225).

both preserve the capacity to appear in public and contribute to an ethos of obligation to one another, as well as access to common space and modes of meaningful community deliberation, so as to stage restoratively just relations. Moreover, the rights and duties above imply a presumption against avoid forms of governance that rely on abstraction and treat persons as interchangeable inputs, both for their intrinsic violation of the precepts above, as well as their propensity to lend general credence to these ways of regarding persons. This likely demands the abolition of capitalism as “an institutionalized social order,”⁹⁷ co-constitutive with depersonalizing abstraction.⁹⁸ It also demands suspicion of politics that valorize nationality or other forms symbolic difference, as well as forms of bureaucratic governance. though these requirements are more defeasible. Such things may be permissible if they *themselves* could be willed in relations that are unobscured and publicly generative of responsibility, despite their *prima facie* departures from this relational mode.

The principles above might be understood as a radicalization and expansion of the discourse theories of justice developed by Jürgen Habermas and, later, Rainer Forst. Restorative justice, like discourse theory, locates normativity in the conditions of intersubjective interaction, through which individuals may, by the non-coercive means of speech, pursue justice on both interpersonal and structural levels. Indeed, Forst’s assertion that “justice is always a ‘relational’ matter” could well have come from Young, or, indeed, from Howard Zehr.⁹⁹ However, restorative justice subscribes to a thicker and more inclusive view of what happens and what matters in the concrete encounter. Conventional discourse theory invests liberatory potential in

⁹⁷ Nancy Fraser, “Legitimation Crisis? On the Political Contradictions of Financialized Capitalism” *Critical Historical Studies* (Fall 2015): 160.

⁹⁸ Moishe Postone, *Time, Labor, and Social Domination: A Reinterpretation of Marx’s Critical Theory*, (Cambridge University Press, 1996) 3-6.

⁹⁹ Rainer Forst, “Two Pictures of Justice,” in *Justice, Democracy, and the Right to Justification: Rainer Forst in Dialogue* (Bloomsbury, 2014) 10.

what Habermas calls “the unforced force of the better argument;”¹⁰⁰ it suggests that reason, located not in abstract reflection but rather in fair interpersonal practices of deliberation and justification, may still be the principle of legitimate, democratic, and just political and legal orders. But is the force of reason the only species of “unforced force” latent in encounter? One might also point to the ethical force of the face in Levinas, which, “imposes itself without violence,”¹⁰¹ as well as to the Arendtian notion of power, which “can arise only out of... cooperative action,” never out of physical force.¹⁰² Speech may involve the exchange of reasons, but this does not exhaust its significance; it is also the sinew of a kind of ethical relationality and collective political potentiality. Indeed, in emptying speech of these faculties and conscripting it for a kind of sovereign reason, discourse theories fall into their own remoteness problem.¹⁰³ Adriana Cavarero might well have been thinking of Habermas and Forst when she claimed that “even those philosophies that value ‘dialogue’ and ‘communication’ remain imprisoned in a linguistic register that ignores the relationality already put in action by the simple reciprocal communication of voices.”¹⁰⁴ Restorative justice, in seeking to provide for relationships that are unobscured, generative of responsibility, and public, advances an ideal of justice immanent in interpersonal interaction that does not omit these extra-discursive valences of speaking.¹⁰⁵ It envisions an *encounter* theory of justice, rather than a *discourse* theory thereof.

¹⁰⁰ Jürgen Habermas, *The Inclusion of the Other: Studies in Political Theory*, edited by Ciaran Cronin and Pablo De Greiff, (MIT Press, 1998) 37.

¹⁰¹ Levinas, *Totality and Infinity*, 219.

¹⁰² Arendt, “Introduction into Politics,” 99. See also Hannah Arendt, *On Violence*, (New York: Harcourt, 1970).

¹⁰³ Charles H. T. Lesch has recently critiqued Habermas along similar lines. See Charles H. T. Lesch, “Democratic Solidarity in a Secular Age? Habermas and the ‘Liguistification of the Sacred,’” *The Journal of Politics* 83, vol. 1 (2019): 862-875.

¹⁰⁴ Adriana Cavarero, *For More Than One Voice: Toward a Philosophy of Vocal Expression*, translated by Paul A. Kottman (Stanford University Press, 2005) 16. Indeed, Cavarero sees Habermas in precisely this ambiguous light (*ibid.*, 208). While Cavarero associates the “voice” with the explicitly bodily projection of sound and language (*ibid.*, 4), I think it could be slightly reinterpreted through Levinas in phenomenological fashion as *speech from one with a face*. This would allow for modes of vocality that do not depend on in-person presence.

¹⁰⁵ For a similar point, see Chakravarti, *Sing the Rage*, 21-22; for a specific acknowledgement of her departure from Habermas, see page 7.

Though capable of articulation in ideal form, this theory need not reduce to another remote “theorem;” if Forst purports to provide “a *critical theory of justice as the critique of relations of justification*,” then restorative justice, best understood, invites a *critical theory of justice as the critique of conditions of encounter*.¹⁰⁶ Developed in part out of the experiences and insights of practitioners and anti-prison organizers, it exhorts us to seek out and ameliorate those concrete factors that efface human beings and alienate them from the world and each other. Its sources are not theorizing justice in empty, noumenal space, but against the specific backdrop of a broken criminal legal system. The sizable—though not total—overlap between advocates of restorative and transformative justice and advocates for the abolition of the prison-industrial complex attests to this.

And indeed, the justice framework presented here provides *organic, internal* resources to further the ends of abolitionist critique and praxis. First, a priority on encounter not only affords resources for a *critical theory* of justice, but demands the creation of conditions for widespread critical thought and practice in day-to-day life. If Dilts is right that abolitionist critique is characterized by attending to what is “taken for granted” in normative discourses,¹⁰⁷ then the position of the parties to Levinasian, that is, not (yet) mediated by sedimented discourse of any kind and yet still animated by powerful ethical motivation, is a precious resource for its pursuit; as Robert Froese has recently argued, this kind of encounter provides privileged grounds for what Marx called “a ruthless critique of everything existing.”¹⁰⁸ In seeking to provide, temporarily, something like such immediacy, the principles of restorative justice above can be said to *catalyze* critique not just in theory, but in real social space. Its demanding, arguably

¹⁰⁶ Forst, “Two Pictures of Justice,” 22. Italics in the original.

¹⁰⁷ Dilts, “Crisis, Critique, and Abolition,” 233-234.

¹⁰⁸ Robert Froese, “Levinas and the Question of Politics,” *Contemporary Political Theory* 19, no. 1 (2019): 17.

unrealizable standards become assets, guarantors of perpetual critique. In this way, it furthers the *negative* project of abolition.

At the same time, fusing a Levinasian notion of encounter with an Arendtian notion of action allows for the negativity of such a critique to find positive form through world-building efforts of collective imagination and struggle. Ruth Wilson Gilmore expresses the essential worldliness of abolition through her concept of “abolition geography,” which centers on the “place-making” capacities of people seeking freedom from “the processes of hierarchy, dispossession, and exclusion that congeal in and as group-differentiated vulnerability to premature death.”¹⁰⁹ Understood as “the antagonistic contradiction of carceral geographies,” Gilmore speaks of creating abolition geography in terms Arendt would appreciate: of imagining “*home*.”¹¹⁰ Indeed, Gilmore’s final example of abolition geography focuses on hunger strikes from inmates held in solitary confinement in California’s Pelican Bay State Prison during the 1970s,¹¹¹ an episode that Lisa Guenther glosses, by way of Arendt, as a “collective re-creation of the common world through political action.”¹¹² Transformative restorative justice makes the capacity to engage in such liberatory “place-making” a core demand of justice. In this way, it furthers the *positive* project of abolition.

Conclusion

If our crisis of justice has made room for a rising global Right and emboldened systems of racial terror, it has perhaps also opened space for abolitionist critique and practice to reshape

¹⁰⁹ Ruth Wilson Gilmore, “Abolition Geography and the Problem of Innocence,” in *Futures of Black Radicalism*, edited by Gaye Theresa Johnson and Alex Lubin, (Verso, 2017) 227-228.

¹¹⁰ Ibid., 238. Italics in original. Arendt often speaks of the importance of the common and built world as man’s “home on Earth” (See, for instance, Arendt, *The Human Condition*, 134). For a discussion that distinguishes Arendt from Levinas through the former’s positive account of world-building, see Schmiedgen, “Polytheism, Monotheism and Public Space.”

¹¹¹ Gilmore, “Abolition Geography and the Problem of Innocence,” 238-240.

¹¹² Guenther, “Political Action at the End of the World.”

politics. To do this, it will require a paradigm of justice, both to guide its efforts in the present and animate the world it will build. In practices and ideals of transformative restorative justice, already present in abolitionist projects and visions, it perhaps already has one.

In this paper, I have sought to describe and develop this paradigm. I have criticized neo-republican frameworks of restorative justice, interpreting it in light of the relational phenomenologies of Emmanuel Levinas and Hannah Arendt instead. The salutary ethical and political phenomenology produced by this integration, I have claimed, can be rearticulated in the language of justice. This reconsideration of the ambit of justice leads to what I have called an *encounter theory of justice*, which possesses resources suited to abolitionist praxis.

This has been a provisional and exploratory effort, which, if it is to be fully actualized, will require the further attention of scholars, practitioners, and activists. What I have offered in broad outline remains to be specified and—very likely—corrected. Thinking about justice, like justice itself, is necessarily collaborative, an effort between persons and for persons—that irreducible plural.

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