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NOTES FROM THE FIELD

Legal education in restorative justice at the university level

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> Quando si incontrano due discipline, se un cambiamento può portare a un'unificazione, tale cambiamento non è mai unilaterale.[1] (Chomsky & Moro, 2022: 121)
>
> Il vero risultato della verità (la verifica, la convalida) è l'incertezza. Possiamo non conoscere le cose, la loro verità, la verità di noi stessi, e tuttavia, mentre percepiamo e agiamo, siamo certi che noi siamo e che le cose sono. Le azioni della nostra vita immediata esprimono questa certezza perché queste azioni sono intessute nel mito.[2] (Hillman, 2001: 40)

1 State of the art: the crisis of legal studies

To reflect on the role that restorative justice, as a field of knowledge, can play in the context of legal education, it is necessary to begin with an observation concerning the context of legal education and a reality check.

First and foremost, legal education – which focuses on *law* and, even before that, the dimension of *justice* – appears to be in a constant tension between tradition and innovation (Todd, 2018: 971). On one hand, there is the tendential stability of the law, the fixed nature of technical language (Galgano, 2010), and a certain conservatism within the legal profession (Mattila, 2006: 93); on the other hand, there are the challenges presented by socioeconomic, legal-cultural, scientific and technological changes related to the phenomena that the law is called upon to regulate (Mannozzi, 2011), as well as the natural evolution of legal and philosophical thought.

University education in law, therefore, is neither static nor immutable but *dynamic*, constantly prompted to reconsider its content and structural dimension

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1 When two disciplines meet, if a change can lead to unification, such change is never unilateral (my translation).

2 The true outcome of truth (verification, validation) is uncertainty. We may not know things, their truth, the truth of ourselves, and yet, as we perceive and act, we are certain that we exist and that things are. The actions of our immediate life express this certainty because these actions are woven into the myth (my translation).

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and refine the teaching methodology. In short, it is a 'work in progress' (Todd, 2018: 972).

The reality is constituted by the crisis of legal studies, identifiable in various legal systems, and it appears to be determined by a plurality of factors that I attempt to summarise.

A first factor is of a perceptual nature: the creeping but widespread distrust towards the 'classical' legal professions. A certain wariness towards the class of lawyers seems to be common in Western societies, in both civil law and common law legal systems. In Italy, this wariness finds a historical-literary antecedent in the novel that 'consecrates' the Italian language (Manzoni, 1840), where the name of a character – the ambiguous and timid lawyer Azzeccagarbugli – has come to metaphorically indicate the untrustworthy and dishonest lawyer. One instance of suspicion towards the role of lawyers comes from American satirical literature: the pamphlet *Lawyers and other reptiles* (Brallier, 1992), of which a sequel has also been published (Brallier, 1996), which satirises the role and ethics of lawyers. Not even the judiciary is immune to critical reservations. An example comes from scientific literature: in the realm of white-collar crime, Sutherland noted attitudes of lesser severity on the part of the judiciary towards so-called white collars (Sutherland, 1949) compared to perpetrators of offences attributable to common or conventional crime.

A second crisis factor is related to the *quality of the experience of justice* for those who access it, a factor, however, difficult to verify or measure empirically. At times, justice is perceived by individuals as distant or slow, risking to convey fear and alienation. Consider, for instance, the architecture of courthouse buildings (Mulchay, 2007: 383), the esoteric ritual of the legal gown (Garapon, 2001) and, above all, the undeniable complexity and high degree of specialisation of legal language.

Especially the complexity and technicality of legal language, along with the overall characteristics of legal language (Mellinkoff, 1963: 24), can, in turn, pose a communicative obstacle. They can become a barrier for foreigners and result in disadvantaged situations for the less socially integrated individuals or those from less affluent classes (Mattila, 2006: 97). The administration of justice may not satisfy the legitimate expectations or the actual needs of the parties involved: compensation may appear as a sum that *compensates* but does not truly *repair*; penalties may be perceived as unjust, excessive, or disproportionately lenient; victims may be dissatisfied with the participatory quality in justice and information they receive, or may be exposed to risks of intimidation or retaliation, merely for reporting the crime, or to secondary victimisation. Consequently, trust in justice – understood both as *trust* and *confidence*, to use the terminology of Directive 2012/29/EU – may experience a severe decline.

A third crisis factor for university education in law concerns the *risk of overemphasising economics* (Collini, 2012) and, consequently, the economic and efficiency dimensions of justice. The introduction of business approach into the administration of justice is sometimes oriented more towards expediting and economising the legal process than promoting justice. As Palazzo writes, there is a risk of 'economic triumphalism', resulting in the scenario where law is somehow

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overwhelmed by the prevailing and invasive economic dimension of the political and social reality: so that the legal dimension is degraded to a serving and operational tool of economic decision-making, no longer capable of expressing axiologically significant orientations for social living (Palazzo, 2019: 125-126).

2 The impact of the justice crisis on the structure of legal studies

The crisis of justice inevitably impacts legal studies, influencing both their structural and content-related organisation and the inclination to enrol in Law Faculties (Marcolini, 2019). As noted by Sabino Cassese in the Keynote Address at the 2016 Conference of the European Law Faculties Association (ELFA), legal studies currently confront a series of critical issues in various European and non-European countries. In France, legal education in universities is still perceived as overly dogmatic and doctrinal, focusing on 'law in the books' rather than on 'law in action'. In Germany, teaching appears not very open to interdisciplinarity and comparative dimensions; academic speculation prevails over the orientation towards the practical application of law. In the United Kingdom, there is insufficient attention to both the teaching of legal values and professional ethics, and the promotion of communicative-relational skills and managerial competencies. Additionally, there is a lack of a system to verify the uniformity of teaching standards. In the United States, law course programmes are perceived as somewhat outdated, resulting in students showing little interest in the subjects taught and demonstrating low motivation to learn. Finally, in Canada, there is a sense of cultural colonisation by American, English and French academic education, where professional and market logics would be predominant (Cassese, 2017).

Italy has also some of the crisis factors among those mentioned above, which probably cause the decline in enrolment in Law Faculties. This is further confirmed by the number of conferences on the future of legal studies held periodically at various Italian universities.

In conclusion, legal studies appear to exhibit problematic aspects related to the following factors: a balanced relationship between the theory and practice of law (Corda, 2021); an adequate openness to interdisciplinarity; a balanced investment in both hard and soft skills; potential forms of cultural dominance; and a predominant reliance on traditional teaching methods (depending on legal systems, these methods may be based on frontal lectures or problem-solving approaches).

3 The challenges of introducing restorative justice in legal studies

At the beginning of the new millennium, there is a significant development in legal studies: the progressive introduction of new subjects, including restorative justice. In some respects, it is an unconventional subject (Marder & Wexler, 2021: 405) compared to those traditionally taught in legal studies (Mannozzi & Lodigiani, 2014). Starting from its nomenclature, *restorative justice* emerges not as another type of law (public, private, civil, criminal, commercial, industrial, administrative,

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labour, tax, procedural, international etc.) but rather as a subject whose core is a new juridical-philosophical *approach to justice*, alternative to criminal justice in theoretical foundations and innovative in methods. The subject, which has primarily been the focus of training courses for mediators and facilitators, is now integrated, although in a limited minority of Italian universities, into legal studies, where it has great potential and can bring unexpected benefits to the entire course of study.

But at this point, some preliminary considerations need to be addressed. The first is that the introduction of restorative justice courses can have different impacts depending on the structure of the legal system in which tertiary education is situated. Indeed, there are significant differences between common law and civil law systems regarding their components, sources of law, role of jurisprudence, and organisational structures.

The second consideration pertains to the fact that the diversity of legal traditions also results in differences in teaching and methodological approaches. To this regard Quattrocolo (2019: 185) observes:

> the first profile that emerges in the general reflection on the state of the teaching experience is the tendency towards staticity that characterizes many civil law countries, whose positive legal systems are articulated on the existence of homogeneous codes and other normative bodies. The burden of a rich positive normative heritage … naturally pushes towards a teaching model focused precisely on the normative data, almost suggesting that this is the only possible way to 'teach law'. Not surprisingly, this characteristic becomes even more evident when compared to the reality of common law, inherently centred on precedent and analogical reasoning…

However, there is not a clear dichotomy between 'ex cathedra teaching' and other teaching methods for legal education. Instead, there are contaminations and methodological overlaps between frontal teaching and other models, including cooperative learning, tutorial approaches, flipped classrooms and co-teaching (the latter, as will be discussed later, is particularly useful in the context of restorative justice courses). In any case, civil law systems tend to predominantly focus on knowledge, perhaps at the expense of skills and, especially, abilities. These differences can also be reflected in the structure and method of teaching restorative justice.

The third consideration concerns the heterogeneity in the training of teachers in different legal systems. Often, university professors learn to teach by imitating their own masters. While this may be adequate for teaching legal subjects (where the dimension of knowledge prevails), it is not the case for teaching restorative justice. It is a relatively new subject and therefore lacks a didactic tradition in the university setting. Furthermore, its teaching involves the transmission of skills and abilities (Moore & Vernon, 2024) that are not straightforward to acquire and, above all, to communicate. The risk is that through traditional teaching, the dimension of restorative justice may be flattened to mere normative data (at least in countries where restorative justice has been normatively regulated), resulting in

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a loss of both the 'humanistic' component (Mannozzi, 2017) of restorative justice and the essentiality of soft skills to practice it.

4 Reasons for the introduction of restorative justice in university law courses (and beyond)

The introduction of restorative justice among the subjects shaping legal professionals – whether they are oriented towards traditional professions like the judiciary or advocacy, or towards professions within the administration of justice but distinct from those mentioned above (judicial police, penitentiary staff, victim support services), or towards other legal professions (corporate lawyers, compliance experts, labour consultants) – is justified by several reasons that I will endeavour to outline below.

The first and fundamental reason is *normative* in nature, both at the national and supranational levels. In particular, the Venice Declaration (2021) of the Ministers of Justice of the Council of Europe Member States encourages Member States to take actions regarding how to consider 'restorative justice as an essential part of the training curricula of legal professionals' and 'how to include the principles, methods, practices, and safeguards of restorative justice in university curricula and other tertiary-level education programs for jurists' (Section 15.iv). Further indications, in a broad perspective that situates restorative justice in the context of victim protection, are in Article 23 of Council of Europe Recommendation CM/Rec 2023(2). Although it refers to the professional training of jurists, it does not exclude and, indeed presupposes, the utility of training already at the university level.

The second reason is *factual* in nature. When restorative justice moves from a largely unregulated community practice to a practice regulated by law, which also disciplines its relationships with the criminal justice system, it is essential for legal professionals to be trained in restorative justice from their university education. This ensures that training in restorative justice is not seen as an 'extra' addition to a perceived complete traditional legal education but is considered an integral part of the essential knowledge of legal professionals. At least in Italy, based on the comprehensive regulation of restorative justice adopted by law decree 150/2023, legal professionals will need to interpret and apply the legislation on restorative justice at every stage of criminal proceedings. Judges and prosecutors are required to inform the parties and facilitate access to restorative justice programmes; lawyers can inform and support their clients in accessing restorative justice programmes and assist them in formalising economic agreements. In general, the more legal systems allow for the use of restorative justice, the more law enforcement, judiciary, legal practitioners and penitentiary staff need legal education to be supplemented with knowledge about the meaning, methods, guarantees and potential applications of restorative justice.

The third reason is more closely related to *the structure of law school curricula*, which mostly consist of a combination of strictly legal subjects. The compartmentalisation of knowledge and the sequence of courses about the

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different law sectors do not necessarily allow legal professionals to develop the awareness of the profound sense of the *justice experience* and its human depth. Integrating restorative justice training into legal studies may help in refocusing the legal education on *justice* and could also serve as an antidote to the efficiency-oriented drift of the procedural system. The legal process, in fact, increasingly resembles a mechanism for producing a decision rather than a mechanism for seeking the truth (Pemberton, 2019: 103). At times, this can lead to compromises in safeguards, especially when emphasising the economy and simplification of evidence or implementing mechanisms for the extinction of the offence or procedural rituals that bypass the determination of guilt. Alternatively, it may involve the compression of participatory rights to enhance the speed (Ghirga, 2021) and efficiency of the repression and surveillance system (Palazzo, 2019: 126).

My hypothesis, therefore, is that it is essential and highly opportune to recognise a *theoretical-practical autonomy for restorative justice*, allowing it to constitute an independent and specific course within legal education. Introducing restorative justice in university legal education can contribute to a comprehensive, globalised (Fiandaca, 2008: 48) and humanistic education of legal professionals. Restorative justice encourages a focus on a concept of justice viewed in its legal-philosophical entirety, without undue 'simplifying reductions' of justice to law, law to legislation, and legislation to the sovereign will of the State (or the majority) (Martini & Zagrebelsky, 2003: 20).

Finally, integrating restorative justice into legal training curricula can aid in acknowledging law as a *social practice* (Smith, 2006). This perspective advocates not for an abstract and self-referential law, but for a legal framework that, to serve as a conduit for justice (Viola, 2020), necessitates embracing the contributions of social actors beyond jurists (Tata, 2020).

5 Benefits of university education in restorative justice for legal professionals

Including restorative justice in the university curricula for legal professionals offers several advantages.

Firstly, it allows for a reorganisation of legal knowledge on a new cultural foundation (Todd, 2018). The legal system – especially the criminal justice system – would be called upon to engage with a model of law detached from *power*.

It is well-known that criminal law functions as a coercive mechanism within public law, primarily serving a retaliatory and punitive purpose, despite the goal of social rehabilitation (Coppla & Martufi, 2024. This tendency is particularly conspicuous in civil law systems, where codifications comprise a *general part* encompassing overarching and interpretive rules for all criminal regulations, and a *special part* that delineates incriminating norms containing prohibitions or commands. Consequently, criminal law inherently embodies a culture of normatively structured and constitutionally legitimised commands. This characteristic is also manifested in university education: teaching is mostly 'tilted'

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towards the space of the teacher, who is the repository of a legal knowledge to be transmitted unidirectionally (Derrida & Rovatti, 2011: 76-77).

Restorative justice, with its 'eccentric' foundations in comparison to the criminal justice system, has the potential to 'break the spell' of legislation centred on the power/subjection dichotomy. It introduces a vision of achieving justice that is not only oriented towards symbolic and material reparation of the offence but, above all, is based on participatory voluntariness, dialogue, mutual recognition of dignity, confidentiality, and openness to the participation of community components.

Secondly, training legal professionals in restorative justice (Pereira, De Craen & Aertsen, 2023) enables them to acquire a new lexicon distinct from the legal one, which is historically dominated by technical and specialised terms.

In a prior study, I argued that restorative justice is a *phronetic science* (Mannozzi, 2020): it taps into a practical wisdom (*phronesis*) (Pemberton, 2019) seemingly distant from legal-penal knowledge (*sophia*). As restorative justice deals with the emotional repercussions of wrongdoing (Rossner, 2013), it requires linguistic (both verbal and paraverbal) and communicative skills distinct from those traditionally associated with legal practice.

Regarding the management of emotions, as emphasised in Council of Europe Recommendation CM/Rec 2018(8), a significant structural difference becomes evident between restorative justice and criminal justice. Criminal law and criminal procedural law appear to suffer from a form of hypo-cognition. In cognitive sciences, hypo-cognition refers to 'the lack of words, and therefore of ideas and models for interpreting external and internal reality' (Carofiglio, 2010: 19). The criminal justice system lacks the language and/or regulatory structures necessary to adequately address the emotional consequences of a crime. This results in the difficulty of recognising victims' needs that extend beyond the mere desire for punishment or compensation. In short, within the criminal justice system, the needs for listening, validation of one's narrative, recognition, and symbolic gestures of reparation, which, as the restorative justice paradigm teaches, are highly relevant in the experience of justice, remain largely unmet.

Building on the premise that language shapes thought (Chomsky & Moro, 2022; Vygotsky, 1962), training legal professionals in restorative justice can enhance their sensitivity and their capacity to look 'beyond' norms. A comparable function is fulfilled within legal education by therapeutic jurisprudence (Marder & Wexler, 2021) and 'law and literature' courses (Reggio, 2020).

Thirdly, integrating restorative justice into legal education can enhance the acknowledgement of *complexity*. The normative formalisation of conflicts simplifies and channels human events into procedural tracks and timelines that are unsuitable for individuals. In the sequence of formalised communications and hearings within prescribed times and methods, particularly those 'frozen' and devoid of emotions, the procedural logic unfolds. It is exclusively oriented towards establishing facts and, according to a well-known conception of the trial, reconstructing an impersonal procedural truth to render a decision (Taruffo, 2020). None of the trial parties lifts their gaze to look at the other; the emotional dimension is either pushed away or compressed because it is considered dysfunctional to the rationality of the

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procedural framework. Every communication is mediated by the defence attorney or the public prosecutor, and the common interlocutor for the parties is the judge. Consequently, the epistemic function of the process is diminished, and the complexity of each person's human story is irrevocably compromised.

Restorative justice offers the jurist a space for reflection that relegates norms to the background and, instead, prioritises the conflict, exploring possibilities for addressing it at its core (Hassemer, 2009). It emphasises managing the effects from a reparative perspective rather than a strictly retaliatory one and highlights the generative capacities of dialogue.

If restorative justice requires the use of a renewed language (Marder & Wexler, 2021), it showcases the potential for dispensing justice without relying on coercion and power. Utilising an accessible and emotionally charged language fosters empathy, encouraging an understanding of the complexity of conflict, especially its emotional impact. It may also guide the parties towards the value of symbolic reparation even before compensation. The ability to employ a language distinct from the legal and punitive one demands skills and abilities, aspects that carry implications at the educational level.

Within legal studies, restorative justice entails, above all, a strong openness to interdisciplinarity: teaching asks for interactions with experts from other fields and a cross-fertilisation of knowledge. Subjects such as philosophy, sociology of cultures, criminology, victimology, human rights, history, and the law of religions are among those that can effectively engage in dialogue within a restorative justice course (Mannozzi, 2019).

However, it remains crucial for the jurist to maintain a solid legal background. Human rights and procedural guarantees demand a proper assessment of the risks associated with restorative practices (Shapland, Buchan, Kirkwood & Zinsstag, 2023), often linked to the methodological limitations of restorative justice. Achieving a good balance between normative and theoretical-practical components in the teaching of restorative justice is necessary to avoid two possible misunderstandings: that the emotional dimension associated with a particular case overshadows the demands of justice and that restorative justice constitutes a form of privatisation of criminal justice.

The didactic methodology to be adopted for restorative justice courses is influenced by the peculiar nature of the subject. Co-teaching can be of fundamental importance, where diverse skills interact to provide students with a vision as comprehensive as possible of the principles, the values, the political-criminal functions, and the contents of restorative justice. This method has been employed for years at the University of Insubria, where restorative justice courses, initiated in 2005 (Corn, 2023), are primarily taught through co-teaching, involving both philosophers and jurists, and basic practices. The interdisciplinary approach is developed in collaboration with colleagues in the philosophy of law, rights of religions, human rights, as well as external experts from other disciplines, and with practitioners.

In summary, in designing a restorative justice course, the guiding criteria should include *balance* and *openness*. Achieving balance between the legal-penal paradigm and the restorative justice paradigm is essential. Nevertheless, there

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should be openness to cultivating broader competencies based on the interdisciplinary connections and the communication of certain basic soft skills (e.g. how to prepare for and conduct a peer circle). Some practical experimentation, within the limits allowed by a university course, can indeed help students understand the profound meaning of restorative justice as a field of knowledge inspired more by *phronesis* than by *sophia*.

The design and arrangement of spaces for teaching restorative justice should be re-evaluated considering the unique characteristics of the subject. Rather than a conventional classroom with stationary chairs, which visually suggests an oppositional perspective, a circular structure is preferable (Marder, Pointer & Ojibway, 2022). This enables both professors and students to operate – even in terms of teaching, in accordance with the principles of restorative pedagogy (Pointer et al., 2023) – by adopting the circle mode, which represents the anthropological 'fulcrum' of restorative justice.

6 Conclusions

A few closing remarks: above all, educating about restorative justice necessitates being shaped by restorative justice. Teaching restorative justice implies the ability to use a restorative language not only in the classroom but also in the design, organisation and management of the course. Welcoming students, ensuring inclusivity and that no one is left behind, being flexible and adapting to their educational demands, understanding their needs and co-designing solutions (Marder, Vaugh et al., 2022) are some of the authentically restorative aspects that ensure *what* is taught is in harmony with *how* it is taught.

Those who teach restorative justice cannot separate teaching methods appropriate to the course from a communicative style – which includes the ability to know how to use different linguistic registers, the use of metaphors and a variety of forms of artistic expression capable of becoming a mindset and even a moral disposition ('*habitus animi*' according to the St. Thomas doctrine). As a result, transformative effects of restorative justice – encompassing communicative methods, a cooperative attitude and a problem-solving orientation – are expected to manifest in the teaching of law courses that coexist with restorative justice courses.

In conclusion, it is anticipated that the soft skills of those teaching restorative justice will become applicable not only in the teaching of other courses but also more broadly in interpersonal academic communication and scientific research.

Restorative justice can support individuals in overcoming what Massimo Recalcati defines as the 'temptation of the wall' (Recalcati, 2023), that is the temptation of opposition, challenge, conflict and separation. These walls are not outside the university; they may also exist within it. Many reasons, therefore, not only justify the incorporation of restorative justice into legal education but also suggest a rethinking of legal studies, both in content and teaching methods, in the light of restorative justice values (Pranis, 2007). This reconsideration is guided by a paradigm that is simultaneously novel and ancient, capable of challenging deeply

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ingrained and longstanding convictions in the realms of justice and human relationships (Llewellyn & Lewellyn, 2015).

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