

AFJ Report

Can restorative justice defuse tensions in the strained USA-China relationship?

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As we progress into the Biden presidential era, American geopolitical strategies are diverging from those of the Trump administration in some areas, notably in the Middle East. However, it is probably safe to say that it is the Chinese-American relationship that will overshadow world events for a long time.

What are the options available to mitigate from this situation? The Vatican, having an ethical and moral tradition which can resonate with the Biden administration's desires to reinforce the protection of human rights, seems to have offered to be a mediator. In the Confucian culture of the Chinese leadership, long term personal relationships are vital to pursuing and maintaining contacts. The Holy See could indeed play a part in restoring the relationship between the American administration and its main Chinese competitor.

An alternative could be to implement the concept of restorative justice to avoid a relationship with China of major and increasing rivalry. Restorative justice has been applied in many countries, incorporated into the legal system in some and has been applied internationally in post conflict areas.

Its application to mass atrocities in post-conflict situations, mainly through Truth and Reconciliation Commissions is relatively recent (Hayner, 1994; Sriram, 2001; Villa-Vicencio and Verwoerd, 2000). The focus is on healing and reparation rather than on punishment. Through testimonies, the commissions help to establish an accurate record of a country's past, and thus to provide a fair record of a country's history and its government's acts (Nagy, 2002).

Truth is the path to healing. Revealing the truth allows both parties to elaborate a way out of continued conflict, even though there may be no subpoena power to enforce it. The interest relies in acknowledging a dispute and a willingness to find a solution, in encouraging dialogue, appeasing tensions and eventually reaching a peaceful solution to conflict. Restorative justice has been applied in schools, companies and at national and international levels. It combines investigative, judicial, political, educational, therapeutic and even spiritual functions.

According to the EFRJ (European Forum of Restorative Justice) restorative justice is an approach of addressing harm or the risk of harm through engaging all those affected in coming to a common understanding and agreement on how the harm or wrongdoing can be repaired and justice achieved.

The opposition between Beijing and Washington that some analysts say will be the structuring factor of geopolitical questions for the next 10 years will most likely indirectly lead to increasing tensions worldwide. Restorative justice deals with the past. It seeks to reconcile two or more parties using a path of dialogue where each party can safely express the harm caused.

Fear increases tensions. Restorative justice aims at dissolving fear as both parties share their perspectives and concerns. Voicing them helps to be heard. Media, social media and authoritarian regimes can reinforce divisiveness through manipulation of ideas. The overwhelming flow of information loses its meaning to an audience that can no longer decipher what is the truth. Restorative justice proposes to leave the “outside” information “outside” of the circle.

In a restorative program, the moderator allows each protagonist to share. China’s economic boom reveals the fear of the US losing its world dominance. From 10% of the US GDP when it joined the WTO in 2001, it was 65% in 2019 and the Covid-19 has accelerated this trend. China has become much more powerful, determined and proactive, and is perceived as expansionary and at times aggressive.

In response to the flaws of the strictly retributive paradigm as we have seen in trade sanctions, restorative justice can help to evolve towards a more holistic, comprehensive approach. Its basic assumptions are the following: the aim of restorative justice is to democratize the social control of punishment, by making its methods more consensual and participatory (Dzur, 2003: 6).

Customs duties have become weaponized and are used as blackmail to force negotiations. During the Obama administration, customs duties on Chinese goods imports increased by 7% and Trump went on to impose an average customs duty of nearly 20% on 70% of Chinese imports. China retaliated; this is retributive justice.

In contrast, the goals of restorative justice are to unearth, clarify and acknowledge past violations, to respond to victims' needs, to create a culture of accountability and respect for the rule of law, to outline institutional responsibility and possible reforms, to advance the prospects of reconciliation and reduce historical conflict over the past (Hayner, 2001: 24).

Cultural differences shape us as individuals and as groups. The United-States built itself on individual freedom. The recent US election reinforced this core value, the Covid crisis exacerbated it. China's communist party and heavy state control policies gives little room to the individual. Religious and philosophical inheritances have also shaped both countries, with Protestantism encouraging individuality and Confucianism acknowledging the benefits of collectivism.

Restorative justice regards society as an organic whole, and thus infuses jurisprudence with principles of natural justice and equity. Countries such as South Africa introduced restorative justice after apartheid based on the African philosophy of "ubuntu" which emphasizes the group over the individual. Cultures that have a strong emphasis on a collective approach have embraced restorative justice. This is the case on Native tribal land in North America whose members are overrepresented in the prison system. These cultures tend to reject adversarial, retributive, approaches to peace in favor of a more conciliatory approach, which gives a larger role to forgiveness, and regards the law as promoting the individual's duty to a larger group rather than the individual's rights and entitlements (Boraine, 2000; Allen, 1999).

There are also limits to restorative justice. Attempting to forge a global consensus about the past can be problematic. In some situations, it may even be questionable

that such a consensus is possible. But restorative justice has been implemented in places believed to be irreconcilable such as in the Israel/Palestinian conflict. Any attempt to impose a single version of history could also be counter-productive, and risk provoking a backlash of competing narratives that celebrate or negate the past, rather than condemning it (Lind, 2008).

A common objective needs to be voiced: a desire to renew relationships built on trust, and ultimately to reconciliation in which one of the expected benefits is the renunciation of retributive justice.

Once perceived positively, globalization is no longer considered beneficial to the USA. It is to China. The conflictual bipolarity between China and the USA automatically forces numerous countries to align with one or the other and is dividing the world.

China appears to be the major winner of the health crisis and is once again driving global growth. The agreement it has signed with ASEAN countries is tremendous in terms of scope and participation, including four of the USA's main strategic allies, namely Japan, South Korea, Australia and New Zealand. Restorative justice can help appease the economic and strategic alliances and prevent growing tensions which could lead to a world of exacerbated confrontation and mistrust.

Furthermore, the dangerous advance towards a kind of world state to the detriment of the nation-state, framed by political administrations and references to identity could reach the supremacy of authoritarian power which strengthens the system of control over each individual. A very small ruling class at the top of the pyramid reigns over the planet, widening the considerable gap between a handful of the ultra-rich and a large majority of the poor. Again, restorative justice can be applied at all levels of society and prevent growing ostracism between countries.

Order does not arise on its own but must be built. Faced with the adversity already identified, restorative justice, far from being illusionary, can help channel the human capacity to overcome this global chaos.

Restorative justice has the capacity to build peace between antagonists and help to renew relationships – individually and communally. Restoring relationships focuses on healing providing anchors to secure reconciliation and foster soundly based regeneration for all parties involved. Will the US and China take on this path to avoid confrontation and built a more prosperous and peaceful future?

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