

Restorative Justice Conference Address

Dublin’s Archbishop Diarmuid Martin Reflects on the Clergy Sex-Abuse Scandal

On April 4 and 5, 2011, the Law School’s Restorative Justice Initiative held an international conference, “Harm, Hope, and Healing: International Dialogue on the Clergy Sex-Abuse Scandal.” The conference attracted a wide cross-section of individuals: victims, counselors, clerics, and others. Archbishop Jerome E. ListECKI of Milwaukee participated, as did Archbishop Diarmuid Martin of Dublin.

Martin became Archbishop of Dublin in 2004. He had long been away from the Church in Ireland, spending almost his entire priestly ministry in the service of the Vatican. Since his appointment as archbishop, he has become a forceful voice and actor for true reform in response to the clergy sex-abuse scandal and shame in Ireland. His words and actions thus have not pleased everyone. The following is an excerpt from Archbishop Martin’s keynote address at the Law School’s conference.

What is my experience? Restorative justice has shown striking results in many areas. But restorative justice is not cheap justice. It is not justice without recognition of wrongdoing. It is not justice without putting the balance right. Restorative justice may even be about forgiving an offender, but, again, it’s not about cheap forgiveness.



Archbishop Diarmuid Martin of Dublin in Eckstein Hall’s Appellate Courtroom

In the case of serial sexual offenders, restorative justice is not about restoration to ministry. There can be admission of guilt on the part of the offender and even expression of forgiveness on the part of a victim, but the bishop has to establish a balance between the need to rehabilitate offenders and the duty to protect children. The bishop or religious superior has a fundamental responsibility to protect children and the most vulnerable in society. I have been told so many times, “As a bishop, you’re the father of the priests. You should be a father of mercy.” As a bishop, I am the father of every person in my diocese, and particularly of those who are vulnerable. And we should never overlook the

fact that the words of Jesus regarding those who harm children are among his harshest and least conciliatory.

Without wishing to be unduly harsh, I feel that I can honestly say that, with perhaps two exceptions, I have not encountered a real and unconditional admission of guilt and responsibility on the part of priest offenders in my diocese. Survivors have repeatedly told me that one of

the greatest insults and hurts they have experienced is to see the lack of real remorse on the part of offenders even when they plead guilty in court. It’s very hard to speak of meaningful forgiveness of an offender when that offender refuses to recognize the facts and the full significance of the facts.

But that does not mean that the reaction to the offender should be simply a punitive one. The sexual abuse of children is a heinous crime. There are no theological arguments and no norms of canon law which can alter that fact in the slightest. This does not mean that the offender be simply abandoned. The prison system on its part should have more than a pu-

nitive role. On release, the Church authorities—even if the offender is dismissed from the clerical state—have responsibilities to the offender.

The first responsibility is to ensure that the offender constitutes no risk to children. The primary responsibility in this regard, I believe, belongs to the public authorities, and regrettably the legislative framework in the Republic of Ireland still leaves a great deal to be desired. There are a number of laicized priest offenders living in Dublin—some of whom were incardinated in United States dioceses and have come back to Dublin and are barely known to us—who are still in total denial of their wrongdoing and must be therefore considered high risk. Some of those, for technical reasons, are not even on a sex-offenders list—they are totally uncontrolled.

There are others where the level of risk is lower. And it is important to ensure that priest offenders live in an environment that renders them as safe as possible and that they be monitored by the diocese or religious congregation. Negative scapegoating of offenders, or simply leaving them be, will in all possibility increase the level of risk that they pose. In the Archdiocese of Dublin, we have a specific member of our Child Safeguarding team who carries out the work of monitoring offenders, and a small committee supports him. In each case, a very strict regime is required of the offender, and hopefully any signs of resistance to such a regime would be recognized early. It must be remembered that some priest sex offenders will be very manipulative—very manipulative themselves and with their priest colleagues—in trying to be restored to some form of ministry and that they will be very manipulative in gaining access to children. (Unfortunately, I have no right to tag anybody—there is only a limited amount that I as bishop can do—but I would hope that the civil authorities would act, but they need a legislative framework in which they can do that, and it's not adequate in the Republic of Ireland.)

While victims—at least in Dublin—will rarely want to have anything to do with the offenders (in many cases, I would say, they rarely want anything to do with the Church), they do recognize when we establish a strict yet humane support approach to monitoring offenders. Such monitoring is in the interest of all, but, as I said, it's very difficult for the archdiocese to do this on its own without some collaborative framework with police and public authorities. (One particular person—he'd been in prison and is now back in prison—during

that interim period, I went to the police authorities at least three times, indicating that I had seen him in unusual circumstances with children. The answer I got is, “We'll send around two men to him tomorrow. We'll scare the wits out of him, but, remember, I have no authority to do that.”)

What does restorative justice mean for victims? This is the challenge that haunts me. I wish I could promise that magic term “closure” to victims. But I am aware that, even saying that, I can be offensive to survivors. I cannot determine when they find closure. There is no fast-track to healing. I can play my part, but I cannot achieve healing by decree. What I know is that I can make things worse and that at times I know that I do that. As was said this morning, promises must be kept. Deadlines must be respected. Established norms must be respected. To victims, any attempt at covering-up or backtracking on norms simply signifies betrayal.

Melissa Dermody, who is here today, will speak of the work that is being done within the Church in Ireland by our outreach service to victims, called *Towards Healing*. It is a service which provides counseling but goes beyond counseling. Victims need more than counseling alone. They have been robbed not just of their childhood but of that full sense of self-esteem without which deep wounds will remain open and will occasionally explode.

For a long time, there was little attention paid to the spiritual needs of victims. Counseling and financial help were provided, but the spiritual wounds were rarely recognized. A precondition for the Church's providing a service of spiritual healing to survivors is that the Church learns to be a truly restorative community, a community which welcomes and accepts the wounded into its community on their terms. Victims have told me of examples of their feeling that their priests, when survivors spoke to them, were somehow embarrassed by their presence. Their priest would prefer not to have to talk about what had happened.

As part of the recent apostolic visitation to the Archdiocese of Dublin, the archdiocese organized a liturgy of lament and repentance, which was prepared primarily by victims of abuse themselves in Dublin. There was an element of risk involved that a public event could be derailed. (Protesters entered my cathedral in Dublin during Easter Mass last year and littered the altar with children's shoes.) But the liturgy of lament in fact turned out to be, at least for some, a truly restorative moment for many who took part, because they felt that



they had encountered in it a Church which was beginning to identify with their hurt and their journey.

I was annoyed to read in newspaper reports, especially in the United States, that the liturgy of lament was “presided over” by Cardinal O’Malley or by myself. It was not led or presided over by any cardinal or any archbishop. By design, the entire sanctuary area of the cathedral was empty except for one large, stark wooden cross. It was my intention that the liturgy would be presided over by the cross of Jesus. There were to be no celebrities. Anyone who spoke came out of and returned to their place among the people of God in lament or in repentance.

But there are so many survivors who did not have that experience of being surrounded by a Church in lament, rather than by a Church still wanting to be in charge, feeling that it could be in charge even of their healing. Lives have been destroyed, people are still left alone with their nightmares and their flashbacks and their fears. Many victims were sought out by their offenders because the offender had seen some vulnerability in them, and their vulnerability has been magnified as a result of the abuse.

For restorative justice to work in a church environment, then, as I said, the Church must become a restorative community—a restorative community for all. Priests who have dedicated their entire lives to ministry and witness feel damaged and wounded by the sinful acts of others. They need new encouragement and enhancement, but always rejecting any sense of denial of what happened or feeling by priests that they are the primary victims.

The culture of clericalism has to be analyzed and addressed. Were there factors of a clerical culture which somehow facilitated disastrous abusive behavior to continue for so long? Was it just through bad decisions by bishops or superiors? Was there knowledge of behavior that should have given rise to concern and which went unaddressed? In Dublin, one priest built a private swimming pool in his back garden, to which only children of a certain age and appearance were invited. He was in one school each morning and in the other school each afternoon. This man abused for years in that parish. There were eight other priests in that parish. Did no one notice? More than one survivor tells me that they were jeered by other children in their school for being in contact with abuser priests. The children on the streets knew, but those who were responsible seemed not to notice.

The question has to be asked as to what was going on in the seminaries. The explosion of abuse cases took

place, it would seem, in the 1970s and early ’80s, immediately after the Second Vatican Council. But the problem existed long before the council, and some of the serial abusers identified in the Murphy Report were ordained and were abusing long before the Second Vatican Council.

Certainly in the post-conciliar years there was a culture which thought that mercy rather than the imposition of penalties would heal offenders. I believe that there was here a false understanding of human nature, and of mercy. Meanwhile, serial sexual abusers manipulatively weaved their way in and out of the net of mercy for years, when what was really needed was that they be firmly blocked in their path.

There is need of a formation regime for future priests which will more effectively foster the development of rounded human beings, not just in the area of human sexuality but in overall mature behavior and relationships. Being a priest today requires a high level of human and spiritual maturity to be able to face the challenge of truly serving the community. My fear is that some young men who present themselves as candidates for the priesthood may not be looking to serve but for some form of personal security or status which they believe priesthood may offer them.

The formation of future priests requires that it takes place in a spiritual environment in a specific setting for priests. But I am particularly anxious to ensure that my future priests carry out some part of their formation together with laypeople, so that they can establish mature relationships with men and women and do not develop any sense of their priesthood as giving them a special status. There are signs of renewed clericalism, which may even at times be ably veiled behind appeals for deeper spirituality or for more orthodox theological positions. What we need are future priests who truly understand the call of Jesus as a call to serve, to self-giving, nourished by a deep personal relationship with the Lord and by constant reflection on the word of God in a life of prayer and continual conversion.

For seven years, I have been Archbishop of Dublin, and I inevitably attempt to draw a balance sheet of where we are. Mistakes were made. It was thought best for the Church to manage allegations of abuse within its own structures and to use secrecy to avoid scandal. That type of avoidance of scandal eventually landed the Church in one of the greatest scandals of its history. Such an approach inevitably also led to those coming forward with allegations to being treated in some way as “adding to the problem” (“here is another one”). Some were never given the impression that they were believed. The norms and procedures which the national office in Ireland publishes

and updates will hopefully change that approach to victims. But it is very hard to turn around the culture of an institution.

A restorative-justice approach which admits and addresses the truth in charity offers a useful instrument to create a new culture, within the Catholic Church, which enables the truth to emerge not just in the adversarial culture which is common in our societies, but in an environment which focuses on healing. At our service of lament and repentance, I stressed that the scandal of the sexual abuse of children by clergy means that the Archdiocese of Dublin may never be the same again—or should never be the same again. But that is more easily said than

achieved. After a period of crisis, there is the danger that complacency sets in and that the structures which we have established slip down quietly to a lower gear.

A Church which becomes a restorative community will be one where the care of each one of the most vulnerable and most wounded will truly become the dominant concern of the 99 others, who will learn even to abandon their own security and try to represent Jesus Christ, who seeks out the abandoned and heals the troubled.

I hope that these rather personalized reflections will be of some use to you today and in our renewal and in our commitment and will give us all new hope. ■

Barrock Lecture

How Should We Punish Murder?

On January 24, 2011, Jonathan Simon, the Adrian A. Kragen Professor at Boalt Hall, the University of California–Berkeley School of Law, delivered Marquette Law School’s annual George and Margaret Barrock Lecture on Criminal Law. Simon’s speech—“How Should We Punish Murder?”—appeared in expanded form in the summer issue of the *Marquette Law Review*. This is an excerpt from that article.



Jonathan Simon

The disproportionate role that murder plays in the media and popular culture reflects its role in ordering our broader conception of crime and its appropriate punishment. Because of its role at the penal summit of crime where life is most threatened, murder establishes the top of the penal scale. At the

very least, a flat and severe sentence for murder has an inflationary effect on the whole structure of punishment through adjusting the scale of pricing of criminal penalties overall. Thus, the high price for murder, at the very least, makes it far easier to set high sentences for all manner of less serious offenses. If murderers serve 10 or 20 years, one is not likely to see repeat burglars or drug traffickers serving for decades. It follows that

where murder punishments are extreme, there is the potential and perhaps an inexorable pull toward more severe punishments for all the lesser crimes; and where murder punishments are moderate, the overall array of punishments will be moderate.

In modern society, this price logic is accelerated by a criminological logic that extends the threat of murder into the larger structure of crimes. In the past, the law of crimes reflected a variety of social functions, including the protection of religious values (blasphemy was a capital crime), status hierarchies, and property. In modern society, however, the preservation of life has become the overwhelming value expressed through the criminal law. Herbert Wechsler and Jerome Michael in their seminal analysis of the law of murder, written at the end of America’s first great wave of violence in the mid-1930s, captured this sense that all of criminal law, and not just the law of homicide, was concerned with preservation of human life. They wrote:

