Drug Courts and Catholic Social Teaching: Challenges for a Retributive Age
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In this retribution-centered age of American criminal justice, with continued high rates of drug offenses, the Drug Treatment Court (DTC) model has emerged as a means of managing the needs of non-violent drug offenders through multidisciplinary teams that include judges, prosecuting and defense attorneys, and treatment providers. Now operative in state and Federal jurisdictions, the model is characterized by a more therapeutic vision of law, an acknowledgment of the drug offender as redeemable, a supportive but accountable relationship between judge and drug offender, and non-adversarial collaboration by court officials and treatment providers. This paper examines relevant principles of Catholic social teaching which tend to affirm the innovative drug treatment court model as a rehabilitative and restorative approach to justice by which both the needs of drug offenders and community safety are addressed. The agreement between Catholic social teaching and the principles underlying drug treatment courts is reflected in the Church’s support for legislation favoring community and faith-based outreach offender programs.

In this retribution-driven era of American criminal justice, the Drug Treatment Court (DTC) model has emerged as a means of managing the needs of drug offenders through multidisciplinary teams that include judges, prosecuting and defense attorneys, and treatment providers. This model includes a revised outlook on the role of law, the drug offender, and roles played by central figures in the Court process. This paper will argue that the principles of Catholic social teaching provide a foundation for a deeper understanding of the merits of the DTC model, which transcends the limits of a more punishment-oriented systemic approach to drug offenders.

Since the end of the 1970s, retribution theory, which is not without its critics, has enjoyed prominence among American lawmakers, whose “tough on crime” approach has sought to control criminal and deviant behavior, especially that related to drug abuse, and to ensure the safety of the community.¹ For example, the Sentencing Reform Act of 1984 was enacted by Congress in part to establish fairness by reducing disparity in
sentencing similar types of criminal offenses committed by similar crimi-
nal offenders and to respond to public concern about undue leniency in
sentencing. This necessitated restricting judiciary discretion in sentencing,
which had been prominent in previous rehabilitation-centered approaches
to controlling crime (see U.S. Sentencing Commission, 2015; Wilkins and
Steer, 1990). Similarly, Federal sentencing guidelines were introduced in
November 1987, which, together with similar state statutes, reflect a fo-
cus on punishing criminal conduct in contrast to a focus on reforming
the criminal offender (U.S. Sentencing Commission, 2014). In the case of
drug-related offenses, highly punitive drug legislation such as the Rock-
efeller drug laws and Federal sentencing guidelines provide for manda-
tory sentencing of certain drug offenses and imprisonment of non-violent
drug-using offenders, and have contributed to the significant growth of
prison populations to massive numbers. At the present time, more than 2.2
million persons are housed in America’s jails and prisons (U.S. Dept. of
Justice, 2013). Furthermore, while the country has witnessed significant
decreases in violent and property offenses, this trend has not included drug-
related crimes.

The failure to lower the incidence of drug-related offenses has pre-
sented distinctive problems. For example, the fact is that drug-offense
recidivism has not declined and encompasses much more than the illic-
it behavior of drug-using offenders. The effect of drug use on offenders
themselves and its victimization of families also must be acknowledged.
The matter further extends to discourse about the effectiveness of sanc-
tioning drug-using-offender behavior by a strict criminal punishment pro-
cess rather than focusing on the needs of drug offenders themselves as a
means to address drug-related crime and promote community safety.

In this context, the emergence of drug treatment courts (DTCs) rep-
resents not only a creative response to drug-related criminal behavior
but also a call for change in the traditional court culture’s perception of
the offending person and the roles played by principal stakeholders: the
judge, prosecuting attorney, and defense attorney, as well as the drug of-
fender him or herself. Such changes, however, also reflect deeper moral
and religious dimensions. Using Catholic social teaching as a framework
to justify the drug-court program, this paper is organized as follows: first,
the problem of drug-related crime in terms of its scope and the effect of
the use of a retributive approach for the past forty years is assessed; sec-
ond, the emergence and nature of drug-treatment courts are discussed, in
terms of their restorative nature and the need for revised thinking about
law and the changing roles of participants in the Court process; finally,
concluding analytical comments are presented which include reference to
the Church’s active support for offender outreach program legislation as a confirmation of the agreement between Catholic social teaching and the principles underlying the Drug Treatment Court model.

THE PROBLEM: DRUG-RELATED OFFENSES

In 2012, according to the FBI *Uniform Crime Report*, arrests of drug violators represented 10.5 percent (1,282,957) of all arrests in the United States (FBI, 2012). A racial factor also is present: while black and white offenders abuse substances in a relatively equal manner, black drug-arrest rates were approximately six times higher than those of Whites. (Sentencing Project, 2013, 4) Meanwhile, arrests for simple possession of drugs represented 82.2 percent of all drug offenses.\(^2\) Furthermore, while more than 50 percent of Federal inmates and 16 percent of state inmates were imprisoned for drug offenses in 2001–2013, a survey of inmates revealed that almost 70 percent exhibited substance dependency and abuse problems at the time they were incarcerated, and 16 percent acknowledged that they had committed a crime to support drug use (Carson, 2013, 15–16; see also James and Karberg, 2005, and Egbert, Church, and Byrnes, 2006).\(^3\) Sixty-eight percent of prisoners were rearrested within five years after being released, including offenders of drug crimes. (U.S. Department of Justice, 2014).

At the same time, there has been no consensus on the expected deterrent effect of incarceration for drug-using-offender behavior. (Tonry, 1995; Cohen, Nagin, Wallstrom, and Wasserman, 1998; and DeBeck et al., 2008) In particular, Tonry (1995) contends that the exponential increase in incarceration rates since the 1980s can be attributed especially to prison sentences for drug offenses. Cohen, Nagin, Wallstrom, and Wasserman (1998) further affirmed that imprisonment of drug offenders has at most only a modest effect on the broader availability and use of illegal drugs in communities (also, see DeBeck et al., 2008). Therefore, while the relationship between drug abuse and crime is clearly evident, so also is the problematic effect of imprisonment on non-violent drug offenders, and the cost of incarceration to tax payers—more than $68 billion yearly.

RESPONSE TO THE PROBLEM:

THE DRUG-TREATMENT-COURT PROGRAM

Drug use and related criminal behavior represent a multi-dimensional problem to be addressed. Drug treatment courts emerged as an intended problem-solving initiative during the late 1980s, based in large part on the increase of drug cases in the courts. Fulkerson (2009) identifies an underlying critique as a basis for the emergence of DTCs, and especially
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for establishing the first drug-treatment court in 1989, in Miami, Florida: “Drug offenders were not being treated for their addiction and were simply ‘recycling’ through the system” (254). According to the National Institute of Justice, more than 2,800 drug courts are now operative throughout the United States.

While drug-court programs have resisted a rigidly standardized operational format, they do reflect a hands-on approach in court management of drug-using offenders: “In general, the offender enters the program through a plea (of guilty), conditional plea, contract with the court, or a similar mechanism. The offender is assigned to a [drug] treatment program. . . . Court appearances can be as frequent as several times a week. Urinalysis is frequent and usually on a random basis” (Gebelein, 2000, 3).

Significantly, the DTC initiative emerges within the context of therapeutic jurisprudence, which represents a relatively new theory regarding law as a means to promote “the psychological and physical well-being of the people it affects” (Slobogin, as quoted in Fulkerson, 2009, 256). According to Winik (1997), this view reflects “the role of law as a therapeutic agent” (185). Senjo and Leip (2001) further describe therapeutic jurisprudence as “the study of the extent to which substantive rules, legal procedures, and the roles of lawyers and judges produce therapeutic or anti-therapeutic consequences for offenders engaged in the legal process” (3). In this context, law assumes meaning as more than a “set of formal principles” to be identified and applied by judges. Rather, it is evaluated more directly in terms of its effect on the lives of those subject to it (Winik, 1997, 190). In terms of the pertinence of therapeutic jurisprudence to DTCs, interaction between the judge and drug offender is especially significant. In judge–drug offender encounters within DTCs, judges engage in the use of positive and negative reinforcement during the on-going contact meetings. The more personal, interactive, and supportive nature of such encounters between judge and offender replaces a reliance on more punitive-oriented sanctioning to control crime. (Senjo and Leip, 2001)

At the same time, elements of retributive justice pertaining to offender accountability for behavior remain at least subtly. In this regard, Rossman et al. (2011) found that “greater leverage” (i.e., the offender’s awareness of consequences of his or her non-compliance with program expectations), among other variables, contributes to reduced involvement in crime and drug abuse. The principal focus of DTCs then is on treatment for the well-being of the offender him or herself, and, as a consequence, the safety of the community. Ashford and Holschuh (2006) add that therapeutic jurisprudence necessitates a collaborative process to address the social and psychological needs of drug-using offenders who need to experience being
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valued and recognized by others in order to develop a sense of the fairness and legitimacy of the legal system and learn to comply with the law (160).

As applied to drug courts, the therapeutic jurisprudence theoretical model is founded principally on the interactive process by which offenders are monitored. While practices of drug-court programs in various jurisdictions are not standardized, they typically include characteristic traits: a collaborative, team-management approach involving central court members, and non-adversarial court hearings, to promote the offender’s personal and responsible self-development to deal with substance dependency (Ashford and Holschuh, 2006, 154).

In their empirical study of drug courts, Senjo and Liep (2001) found support for the hypotheses that “supportive Court monitoring” had a positive influence on offender behavior both in terms of crime and substance abuse, while “adversarial court monitoring” had an adverse effect. The monitoring of cases by the Court, then, entails more than reliance on legally defined criminal sanctions. Rather, Court participants—judges, prosecuting attorneys, defense attorneys, drug treatment providers, and probation officers—function collaboratively with each other to permit law to have a therapeutic effect on offenders. In contrast to more retributive, punitive, systemic practices, the law in relation to drug-court programs seeks to realize a broader vision of control by means of support for personal reform by the offender.

The focus of the DTC program is not simply a response to the recidivism rates of drug offenders, but also to the need to address drug offenders as more than violators of law, or personae non grata in need of punishment. Pope Francis’s emphasis on a “culture of encounter” that reflects the need to recognize the “other” as created in God’s image provides further insight from the standpoint of Catholic social teaching. Encounter is a “proxy” for mercy and places emphasis in the first place on compassion rather than judgement (Allen, 2013). In 2014, in addressing unaccompanied child migrants, the pope described the need to avoid marginalizing any person as part of a “throw away culture” (also, see Weldon and Snyder, 2014). This exposes the limits of a retribution-driven approach, which appears to convey a mutually exclusive dichotomy between those whose behavior violates the law versus those whose behavior is perceived as law-abiding (see Von Hirsch, 2007). It is to be noted that such an approach prioritizes proportionate sanctioning based on offender behavior without sufficient recognition of the person of the offender (see Von Hirsch, 2007).

More poignantly, in a homily on the feast of St. Rita of Cascia (March 13, 2013), the pope identified the principle of “doing good” as unifying all humanity. This principle is based on the belief that every person not only
is capable of doing good but is redeemable. In a commentary on the pope’s homily, David Perry (2013) reflects on the significance of the culture of encounter which, he maintains, is reflected in statements from the Second Vatican Council about “our shared humanity, universal rights, and the necessity to find common ground.” Vogt (2007) further suggests that public institutional practices can serve to extol virtues—namely, compassion and social care—that underlie more abstract principles of Catholic social thought and affirm the Church’s commitment to the common good. (398)

DTCs emerged, as noted previously, as a therapeutic response to drug crime trends. Within the context of therapeutic jurisprudence, however, the drug court program necessitates an innovative and communitarian approach regarding how judges, and prosecuting and defense attorneys, play their roles as members of the Courtroom community. Berman and Feinblatt (2001), who were actively involved in creating drug courts, identify common criticisms by judges regarding traditional procedures in drug-offender cases. In particular, judges typically have complained about an “assembly-line” approach to disposing of cases that characterizes traditional court practices, and a lack of “both information and sentencing options . . . for responding to the complexities of drug addiction . . . cases” (Berman and Feinblatt, 2001, 129). In the context of therapeutic jurisprudence, however, judges function as central figures and necessarily engage in on-going interaction with the same offenders, as is apparent from the following descriptive account of a drug court in Honolulu, Hawaii:

The judge is robed and elevated in typical courtroom fashion, flanked by the courtroom staff (clerk, bailiff, and stenographer), with a deputy prosecutor and public defender at small tables facing the bench. The behavior of the judge alternates between legal formality at decision points and [the] informal . . . ([D]efendants appear every two weeks and sometimes weekly). [The offender] steps in front of the bench, exchanges greetings with the judge, and then responds to the judge’s brief and often routine questions, the first of which is usually “Are you clean and sober?” . . . As the judge becomes more familiar with the client, he or she will expand the questions to inquire about the client’s specific activities since they last met. Over time, the judge will demonstrate to the client an awareness of much of what is going on in the client’s life. . . . The communication is on a colloquial level. . . . When appropriate, the judge may use humor to make a comment about the defendant’s problematic life. Sometimes . . . the questioning shifts to a more serious tone. . . . Defendants are praised by the judge for performance in line with program directives. Continued sobriety is regularly recognized and commended.
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But the judge promptly and sharply disposes of rule violators [for] . . . being missing at a scheduled hearing, going AWOL from treatment, . . . lying to direct questions about relapse.

The judge is thus activist, informal and formal. The judge imposes sanctions or grants clemency and positive recognition without delay. The judge is the clearly visible authority through which the program operates. (Kassebaum and Okamoto, 2001, 93–94; see also Miethe, Lu, and Reese, 2000)

According to Fulkerson (2009), it is essential that the DTC judge be supportive of the “disease model [which] recognizes that addiction is a chronic condition, which will often manifest itself through relapses.” (255) Such recognition is especially necessary because the judge determines the degree to which the offender is responsibly making progress. In essence, the drug-court judge, functioning within drug courts, addresses the offender as a vulnerable, imperfect human being who nevertheless is capable of self-reform. At the same time, prosecutors and defense attorneys and treatment providers also play their roles in amended fashion. In particular, they relate in a non-adversarial manner to assess the eligibility of a drug offender to succeed in the drug court program. Treatment providers also are present as stakeholders in the process to insure the provision of information that would permit the court to address the case needs of offenders in terms of responsible support. The approach of DTC programs is similar to that of the Latin-American culture and ecclesiology influencing Pope Francis, wherein, according to Munoz-Visioso (2014), the Church, while hierarchical, has in general a much more “communitarian and missionary character.” Thus, “the emphasis [is] on process over events (and people over programs).” In this regard, Mannion (2007) describes the church as on a journey “toward being a community where theory . . . teaching, and practice are in greater harmony, a community that works to build the kingdom of love, justice, and righteousness” (xiii). Cardinal Joseph Ratzinger (2001), as Prefect of the Congregation for the Doctrine and Faith, reflected on the Post-Vatican Council’s understanding of Church as more than “a structure or organization” but, rather as a living organism of the Holy Spirit . . . a living reality and our relationship with it.” The Drug-Treatment-Court model clearly reflects such a process by its offender-centeredness within a context of support and reform.

Within the context of Catholic social teaching, human worth is a vital moral principle. Cardinal Walter Kasper (2013), in his profound theological development of mercy as central to Christian life, makes reference to “the unconditional dignity of each human being [which] is given . . . not by society, but by the Creator and, therefore is ‘sacrosanct and inalien-
able’” (186). The offender as a person and creature of God enjoys certain precedence. In his encyclical, *Mater et Magistra*, Pope John XXIII, re-emphasizing the teachings of his predecessor, states that human beings share a “sacred dignity” and are “the foundation, the cause and the end of every social institution” (Para. 219). In *Pacem in Terris*, we read that every human being, created in the image and likeness of God, possesses an inviolable character that is contained in the Natural Law (Para. 3, 5). Because every person shares an equal dignity as a creature of God, no one is “superior” to anyone else (para. 9). By Natural Law, every person warrants respect for his or her dignity, and also has a right and obligation to use his natural gifts and abilities to become responsible to others. Every person is resilient and capable of reforming his attitudes and behavior as a dignified creature of God. This refers to those who possess legal authority and those subject to authority alike.

At the center of the history of Catholic social thought is an emphasis on the nature of human persons rather than simply on human behavior. In this regard, human dignity is so deeply embedded in the nature of all persons that it must not be made subject to changing social and political ideologies. In *Gaudium et Spes*, a principal document from the Second Vatican Council, the dignity of human nature is described as “out of the reach of changing opinions which are wont to devalue the human body or glorify it” (Para. 34–36). Pope John Paul II, in *Evangelium Vitae*, further emphasizes that human dignity is not subject to vacillating ideologies that in different eras evaluate the inviolable worth of each person differently—politically, socially, and morally (Para. 4, 9, 12, 18).

The nature of the inherent value of all people is further supported by magisterial and scriptural tradition. As reflected in *Justitia in Mundo*, the statement of the Synod of Bishops published in 1971, human dignity is not someone’s personal possession. Every person is responsible for growing and developing as a creature of God with Whom every one shares an everlasting relationship, and for respecting the dignity of others. In Isaiah 57:18–21, Yahweh’s mercy is extended to all who have erred and are contrite. In the Gospel of Matthew, Jesus Christ challenges believers to serve God by serving others, including visiting those in prison. Finally, the theme of service as a cognate of leadership is explicit in the Gospel of Matthew (20:26), wherein Jesus responds to a request by the mother of the disciples James and John to afford them a place of highest honor in the Kingdom of God: “Whoever wishes to be the first among you will be your servant.” This statement has inspired more recent attention to the need for “servant leadership” in modern organizations. Jones-Burbridge (2012), making reference to Robert K. Greenleaf’s vision of this theme,
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states: “True leadership must be for the benefit of followers, not to enrich the leader” (45). Gallagher (2010) applies this theme to the Church and explains that believers are more likely to respond positively to leaders they trust. Jones-Burbridge (2012) identifies “empathy, awareness, healing, persuasion [and] commitment” as traits associated with the idea of servant leadership and founded, in part, on the leader’s belief in the “intrinsic value” of those served (46). The nature and effect of leadership in religious or secular venues, then, is informed by its underlying interactive dimension.

The drug court’s manner of monitoring offenders has broader ramifications for both the offender and the community. In effect, it represents a revised outlook from more traditional criminal justice retribution and deterrence-driven approaches that are primarily based on the imposition of sanctions to control wrongful behavior. In the DTC process, the encounter between judge and drug offender represents a unique and meaningful systemic approach to acknowledging and responding to human vulnerability. For example, Cooper and Bartlett (1996) found that “50 percent of all respondents indicated that the opportunity to talk over their progress and problems with a judge was very important, 27 percent felt that it was important,” 65 percent said that these encounters were essential to their being able to complete the program successfully, and 73 percent reported that being able to interact with one rather than with a number of different judges during case processing was essential for their completion of the program (Cooper and Barlett, 1996, 6, cited in Senjo and Leip, 2001, 7). Furthermore, in a multi-site evaluative study of adult drug courts, Rossman et al. (2011) found that the judge, through his or her perceived fair and respectful interest in offenders of all demographic subgroups, is “the primary mechanism by which drug courts reduce substance use and crime” (7).

The non-adversarial nature of drug-court proceedings also is a distinguishing characteristic not present in traditional, normative criminal-court hearings. It facilitates shared advocacy by both prosecutors and defense attorneys, and in some courts, not only reflects a change from the ways in which judges have traditionally played their roles, but provides an opportunity for prosecutors and defense attorneys to collaborate with each other, and in some cases, “craft systems of sanctions and rewards for offenders in drug treatment” (Berman and Feinblatt, 2001, 132; also, see Fulkerson, 2009, 254–55). Hence, judges, prosecutors, and defense attorneys, together with service providers and probation officers, engage in collaborative case management to assist the offender in reducing recidivistic behavior, which in turn promotes community safety. In essence, such reintegrative
processing of drug offenders serves to solidify the offender within the community (Maruna, 2011, 14).

This participatory trend indicates that a high level of engagement among DTC offenders maintains the basic goals of justice while revising them for the better. This is consistent with the U.S. Catholic Bishops’ statement that a necessary part of human development is for all to have a voice in the shaping of their lives (USCCB, 1986, para. 77).

THE RESTORATIVE NATURE OF DRUG COURTS

The restorative process by which drug treatment courts monitor drug offenders engages the offender in rather distinctive interactive encounters with the judiciary and other court members as well as treatment service providers in a non-adversarial setting. This strongly suggests an approach to justice that aims to be rehabilitative and restorative in its intended effects on the offender and those harmed by his addiction-driven, illicit acts, with implications for offenders’ families and the community (Fulkerson, 2009, 264). The nature of drug-abuse offenses complicates the identification of a victim and resultant harm, which contrasts with prominence given to victims in non-drug offenses. Braithwaite (2001), however, provides clarification here. He argues that the empathetic dimension of a restorative approach to justice enables us to focus on the criminalization of the harm spawned by drug abuse rather than on the abuse itself. In this regard, the harm extends to direct and indirect victims, to include families and the community, and provides a social rationale for treatment (233).

The idea of justice as “restorative” developed from earlier historical roots in the 1970s and is now operative in more than three-hundred jurisdictions throughout the United States (Van Wormer, 2001, 33). According to Bazemore (2007), restorative justice represents a model of justice that transcends a view of crime as simply an act in violation of law and emphasizes that criminal behavior is socially significant “because individual victims, communities, offenders, and their families were harmed” by the criminal act (656; also see Dorne, 2008, 3). This program has further been described as a response to systemic failures to address the effects of crime and justice on those who are affected by criminal behavior incidents. Geske (2005), a professor of law, describes an innovative program at Marquette Law School that is focused on the development and preparation of students for a service-oriented practice of law, and engages students in facilitating dialogue and interaction between “stakeholders,” or those who are parties to crime events. Such a reparative approach also necessarily extends the meaning of justice beyond an excessive reliance on retribution.
Restorative justice has even wider implications for all who are party to the criminal act. The offender is no longer primarily considered a passive recipient of punishment, but one who must affirmatively acknowledge the effect of his or her criminal behavior on others as well as himself and his or her responsibility to the needs of the victim. The victim no longer is a passive participant to whom restitution is due, but one whose physical and emotional needs deserve to be recognized and for whom the offender is responsible (Dorne, 2008, 21; also Doolin, 2007, 433). Also, the community assumes a responsibility to establish or maintain supportive services for the offender and provide a safe environment for all of its members (Clear and Dammer, 2003, 328). According to Egbert, Church, and Byrnes (2006), “the drug court model offers communities the opportunity to ‘own’ and restore drug offenders, and provides drug offenders with the opportunity to restore their communities and themselves as members of their communities” (76). Justice, in such a view, encompasses a broader, interactive, and responsive approach not focused simply on the criminal act.

O’Hear (2009) provides further insight. He argues that drug-court programs would be more effective as restorative processes if treatment were more prominently based on “constructive dialogue” among community members and drug offenders and their families about the community effects of drug-related offenses. By such an approach, the harm connected to drug offenses could, for example, be identified more clearly in terms of its social effects and contribute more substantively to discourse regarding racial injustice in drug-offense matters. Roche (2001) maintains that the idea of restorative justice in an earlier era emphasized the process whereby all stakeholders of a particular criminal incident came together to resolve implications of the offense for all parties at present and for the future. However, Roche argues that the inclusion of a values-emphasis can more clearly define what a restorative program is in terms of doing justice in criminal matters. (341, 346) For example, he states: “The basic value of the criminal justice process should aim to heal and repair the harm caused by crime. . . . This harm affects in part the offender him or herself, and it is from the effects of the harm that the offender must be restored. Rehabilitation of the offender then can be viewed as “a by-product of the goal of restoration.” Mercy and forgiveness comprise other values of restorative justice that are pertinent for reintegration of the offender to the community (Roche, 2001, 346–47).

In essence, within the paradigm of restorative justice, crime is an act that is more than a violation of law. Rather it must be explored in terms of “harms” to others related to the criminal act. In terms of the offender, within the context of Catholic social teaching and as emphasized in Pa-
cem in Terris, the offender must be distinguished from the offense: “One must never confuse error and the person who errs. The person who errs is always and above all a human being, and he retains in every case his dignity as a human person; and he must be always regarded and treated in accordance with that lofty dignity” (Para. 158). The person who acts criminally or is substance-dependent remains a human being with dignity. This means that every criminal offender and substance abuser is redeemable as a person. In this regard, Kasper’s (2013) development of mercy as a divine virtue is significant: “mercy is the power of God that sustains . . . builds up . . . [and] bursts the logic of human justice which entails the punishment and death of the sinner” (56). Finally, the American bishops emphasize that the “spiritual dimension of healing and hope” includes the essential components of restoration and rehabilitation, and that the effectiveness of restorative justice lies in its ability to “address the systemic and structural barriers to healing, such as racial and economic disparity [and] cycles of crime and incarceration” (USCCB, 2015).

Discourse regarding the relationship of restorative justice and DTC programs in response to drug-crime offenders also provides a context in which to address a more subtle underlying dimension of the issue: the experience of shame. Within the criminal justice process, from arrest to sentencing, shame is present. Braithwaite (2000) identifies two types of shaming. Integrative shaming by nature is characterized by respectful interaction between authority figure and subject, whereby “the offender is treated as a good person who has done a bad thing” (282). Conversely, shaming can also be “stigmatizing,” characterized by disrespect, whereby the offender is treated as a bad person who has done a bad thing.

In this regard, the effect of the DTC program on offenders can also be assessed by considering the manner in which shaming is implemented. Stinchcomb (2010) emphasizes that certain aspects of DTCs—holding offenders accountable for their behavior and efforts at recovery, the court’s employment of a “tough love” approach, reliance on team-oriented, collaborative intervention, and the utilization of both formal and informal judicial discretion that acknowledges the likelihood of relapse—permit the offender to be dealt with in terms of the unique circumstances of his or her individual case (162). This confirms the connection between restorative justice and DTCs, since punishment is not viewed as the “predominant mode of addiction control” (156).

The DTC initiative transcends the contemporary retributive focus on punishing offenders proportionally to their illicit behavior, with its reliance on harsh punishments to deter behavior. In essence, the program is communitarian in purpose and collaborative in approach, promoting a re-
formative opportunity for drug-abusing offenders and an opportunity to enhance community safety (see Berman and Feinblatt, 2001, 131).

The U.S. Conference of Catholic Bishops (USCCB), in a central statement on criminal justice issued in 2000, broadens this view by stating that the goals of protecting society and rehabilitating the offender are necessarily intertwined. In contrast to the retributive approach’s emphasis on punishment as a deterrent, a restorative approach emphasizes that community safety is essentially achieved by the mutual investment and responsibility of the offender, the victim, the community, and the court system (see USCCB, 2000, nos. 4, 37, 38). The often-cited goal of securing the safety of the public through criminal-justice policy, reflective of both retributive and rehabilitative approaches, is very consistent with the Church’s magisterial focus on the common good, which is the effect of an ongoing process rather than an isolated goal to be achieved. In this regard, according to Vogt (2007), within the context of Catholic social teaching, such virtues as compassion and hospitality and the principle of solidarity necessitate “conversion of the whole person” to promote the common good (401). In Evangelium Vitae (1995), Pope John Paul II states that unless a society is committed to the common good, it will more likely speak of the “dignity of the person” and “justice” in word than achieve it in policy. Furthermore, as emphasized in Sollicitado Rei Socialis (1987), true “solidarity” within society is achievable only when all members acknowledge the inherent value and dignity of each person, which includes themselves as well as others. Such commitment must be made by individuals, communities, and institutional systems alike (para. 38–39). Also, in Populorum Progressio (1967), Pope Paul VI affirms that an institutional response to promote human well-being contributes to individual growth, a sense of social order, and “a more perfect form of justice among men” (paragraph 76).

Finally, given the substantive socio-legal and moral foundation of DTCs, what has been the outcome of such a process? In a meta-analysis of drug-court-assessment literature, both Belenko (2001) and Stinchcomb (2010) found a steady average of program completion by offenders (c. 50 percent), and a reduction of drug use and criminal activity during program participation. Furthermore, Egbert, Church, and Byrnes (2006), in an evaluation of a multi-service drug-court program in the state of Utah, found that family therapeutic and employment services can enhance the drug-court process, and contribute to offenders’ engagement in restorative relationships. Research, however, has been less conclusive about post-program effects related to drug use and criminal behavior. Also, the significance of the subsequent implementation of restorative responses cannot be overstated. In particular, Miethe, Lu, and Reese (2000), in a study of
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DTC’s in Las Vegas, Nevada, hypothesized that “reintegrative shaming,” characterized by respectful and supportive interaction between authority and subject, was employed in the processing of drug offenders. Their findings, however, indicated that the reintegrative approach, as implemented, was not strong enough to effect expected lower recidivism rates.6

CONCLUDING REFLECTIONS

In an age of American criminal justice that predominantly has been defined by reliance on a retributive approach to address crime, the drug-treatment-court model emerged as an institutional response to address increasing rates of drug offenses. This model seeks to do justice through an innovative and supportive process that provides the opportunity for non-violent drug offenders to address their addictive disease. Self-reform and community safety are its central intended outcomes.

As developed in this paper, the principles of Catholic social thought reveal both deeper dimensions to and the ultimate justification of the Drug Treatment Court model as a values-centered, institutional response to non-violent drug offenders. Addressing drug crime by an inclusive approach that is restorative and offender-centered not only establishes the pertinence of Catholic social teaching to social issues such as drug crime, but also emphasizes the limits of a more exclusively offense-centered, retributive approach.

The principles of Catholic social teaching affirm the innovative practices of drug treatment courts. In this model, law is viewed as a therapeutic agent rather than principally as an agent of punitive control; the roles of judges, as well as court attorneys and treatment providers, are collaborative in a non-adversarial setting; and the process of monitoring drug offenders necessarily involves long-term relationships with judges who are supportive while also demanding accountability of offenders as fallible human beings capable of reform.

While research has established the in-program effectiveness of drug courts in terms of decreased drug use and criminal behavior, there is a need for further research to identify factors that would contribute to sustaining these effects in the post-program lives of offenders. The Church exhibits a consciousness of this need by actively advocating for passage of the Second Chance Reauthorization Act of 2015 which, in part, expands grant programs supporting employment and mental health services for offenders. Similar support is found for passage of the Recidivism, Reduction, and Public Safety Act which would facilitate partnerships between correctional facilities and faith-based and community-based organizations to develop recidivism reduction programs (USCCB, 2015). Legislative
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support for outreach programs address the needs of both the drug-using offender and the community. In the end, criminal justice procedure can foster an image of society in which human fallibility and redemption are more equally acknowledged, and opportunity for a new future is offered.

Notes

1. Flanders (2014), in a critical, historico-philosophical assessment of retribution theory, points out that the idea of fairness in its relation to proportionality in sentencing is arguable. (313) For example, do we know how much punishment is deserved for different types of criminal behavior? He argues that the justification of punishment must be based on more than its deservedness, as reflected in retribution theory (314). Rather, focus needs to be directed to how crime can be prevented from happening and how the lives of offenders may be improved. Flanders (2014) concludes that retribution theory fails to address directly both empirical findings regarding the effects of its approach and how people should be punished (356).

2. Possession of drugs includes possession of heroin and cocaine derivatives, marijuana, synthetic and manufactured drugs, and other dangerous non-narcotic drugs. Marijuana accounted for 42.2 percent of all drug possession offenses (2012 FBI Uniform Crime Report).

3. James and Karberg (2005) also found that those inmates who engaged in criminal acts to support drug habits were more likely to commit violent, property, drug, and public order crimes.

4. The interactional nature of Drug-Court practices based on the goals of therapeutic jurisprudence necessitates research based on variables that reflect the dimensions of the encounter between offenders and judges especially. Green and Winik (2010) conducted research to explore the effect of a random assignment of judges on recidivism among drug offenders either incarcerated or placed on probation. They found that being sentenced by a punitive or lenient judge had no significant effect on the likelihood of re-arrest. However, the study measured judges by their sentencing history rather than by the influence they may have exerted through statements or comments made during sentencing. The problem-solving and therapeutic nature of drug courts necessitates more qualitative methodology that explores the inter-personal and on-going nature of offender-judge (and also offender-prosecutor) interaction as contributing to the realization of program goals.

5. Exegetical commentary on Matthew 20:20–28 suggests that the highest point in Jesus’s own ministry will be “when He gives His life for the deliverance of the human race from sin.” It is also noted that James and John did not understand that “greatness in the Kingdom is not lordly power but humble service” (Commentary, New American Bible, 1986).

6. According to Garvey, doubts about the deterrent effect of shame are especially evident when it is stigmatizing: “It may be because the offender is so socially isolated that he already is at risk of engaging in criminal behavior” (Garvey 1998, 752).
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