

A special issue on restorative justice: unravelling the mystery

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In restorative justice, crime is recognised fundamentally as a violation of people and relationships, rather than as a violation of law (Zehr 1990). When criminal justice systems shift to framing crime in this way, there is a consequent recognition that an appropriate response to crime is to allow those affected by crime to discuss the event and arrive at a consensus about reparation (Latimer et al. 2005). With the increasing incorporation of restorative justice approaches and processes into mainstream criminal justice systems, researchers have recognised the need for thorough evaluations of the impact of restorative justice on various important outcomes, such as recidivism rates and participants' perceptions that restorative justice procedures and their outcomes are fair and satisfactory. A wide and varied body of restorative justice research has been developing to meet this challenge over the past two decades, including program evaluations (Trimboli 2000), literature reviews (Braithwaite 1999), and meta-analyses (Latimer et al. 2005). In this special issue, we call for researchers to meet the next important challenge in restorative justice scholarship, framed eloquently by Kenneth Polk in 1994: Why does restorative justice work in the desired ways, for whom is it working or not working, and does it work differently for different people? Note that Polk presented us with these challenging questions in 1994—nearly two decades ago. Since that time, relative inattention to these questions in restorative justice research has left us with a strong understanding of the powerful effects of the restorative justice process as a whole, but without an equivalent understanding of *why* the process is so powerful, or the elements of the process that are more or less powerful. This relegates the transformative power of restorative justice to the realm of mystery. In order to develop restorative justice procedures and policy most effectively in the future, we seek a greater understanding of the basic mechanisms that drive the success or failure of restorative justice processes, and a more nuanced insight into the specific factors of

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restorative justice participants or procedures that enhance or detract from restorative interactions.

Re-Emergence of Restorative Justice in Modern Justice Systems

Weitekamp (1999) points out that restorative processes played a role in addressing transgressions in the earliest nomadic and highly interdependent communities, where the clan of the victim and the clan of the offender negotiated resolutions that aimed to satisfy all parties. In the transition to early state societies, the focus on restitution and compensation to victims continued, and it was only around the ninth century that trans-local and trans-tribal institutions in the Western hemisphere began to co-opt authority over the management of transgressions, turning the focus from victim restitution to state restitution, for crimes they now portrayed as transgressions by the offender against the state (Barnett 1977). The modern re-emergence of restorative justice has led to its development in many places as a legislated alternative to the system of state-assigned sanction; in many modern restorative justice processes, victims, offenders and their supporters negotiate sanctions and compensations, with the state lending its authority to the negotiated outcome of the restorative justice procedure. For example, the NSW Young Offenders Act 1997 governs the administration of Youth Justice Conferencing in New South Wales, Australia. In these conference procedures, the victim and offender agree upon a resolution, but the resolution itself is subject to review by an administrator to ensure that it falls within limits on sanctions assigned for that offence by courts, and the offender is returned to court if he or she fails to fulfil the terms of the resolution agreement. As such, the role of restorative processes in modern justice systems is something of a middle road between its earlier iterations; while the ability to negotiate a resolution has been returned to the stakeholders in the crime, it is now the authority of the state (as well as, or at times instead of, the interdependence of the community) that enforces those negotiated resolutions.

Youth Justice Conferencing in New South Wales is only one modern restorative justice model. There are several restorative justice approaches around the world that have been integrated into formal criminal justice systems, such as the Gacaca Court System in Rwanda, the Truth and Reconciliation Commission in South Africa, Sentencing Circles in Canada, and Family Group Conferences in New Zealand. Restorative justice processes can occur at various stages in the criminal justice system, with stakeholders engaging in restorative justice conferences after sentencing for a crime has occurred and often when the offender is in prison (e.g., in Scotland and Australia), before sentencing has occurred and in tandem with court proceedings (e.g., in the United Kingdom, judges are allowed to take into account offenders' participation in restorative processes as part of pre-sentence reports), or as a diversion from court altogether (e.g., Youth Justice Conferences in New South Wales are part of a hierarchy of legal responses intended as alternatives to sentencing through court procedures). Restorative justice can occur in response to minor or serious offences, with restorative meetings convened to deal with offences ranging from minor theft to murder, and with both juvenile and adult offenders.

In the 1990s, restorative justice programs in their various forms spread rapidly around the globe, with Umbreit (1998) reporting that at least 300 restorative justice programs had developed in North America and over 500 programs had developed in Europe by the mid-1990s. The Council of Europe and the United Nations have supported the development and application of restorative justice principles, with the European Forum for Victim Offender Mediation and Restorative Justice recommending in 2000 that conferencing processes

should be made available in all jurisdictions and at all stages of criminal justice processes. Basic universal principles of restorative justice were compiled by the United Nations Economic and Social Council in 2002, recommending particular procedural safeguards, such as confidentiality and voluntary victim and offender participation (Muncie 2005).

Success of Restorative Justice

The spread of RJ processes in modern criminal justice systems was closely linked to their success in the jurisdictions in which they had already been implemented. Several evaluations have now demonstrated the success of restorative justice processes, in comparison to court, on measures such as participant satisfaction and recidivism. For example, Latimer et al. (2001) reviewed 27 victim-offender mediation programs and eight conferencing programs in a meta-analysis, and found that restorative processes resulted in higher satisfaction for all participants and lower recidivism rates for offenders than did non-restorative alternatives. In evaluating the Family Group Conferencing scheme in New Zealand, Maxwell and Morris (2001) found that restorative justice contributed to reductions in recidivism, even when other critical factors (e.g., subsequent life events, negative early experiences) were controlled. In an evaluation of the RISE project in Australia and the United Kingdom, Sherman et al. (2005) found that restorative justice also performed favourably on other measures, including increasing the likelihood that victims received an apology from the offender, as well as increasing victims' views of those apologies as sincere.

Concerns About Restorative Justice

As an important counterpoint to these positive evaluations, many scholars have been cautious and critical about the role of restorative justice in the criminal justice system. For example, scholars have expressed concern that the political climate in which restorative justice processes are implemented may affect perceptions of the legitimacy of restorative justice processes: In light of other policies regarding crime and Indigenous peoples, Cunneen (1997) warns that restorative justice processes may be viewed by Indigenous youth as a cheaper or easier way to deal with them, rather than as a progressive step towards restoration over detention. While it might be argued that restorative justice procedures are culturally appropriate for Indigenous offenders (since they are more consistent with traditional methods of sentencing than are English-based court procedures), Blagg (1998) cautions that there is an erroneous assumption of homogeneity among Indigenous cultures in the implementation of restorative justice programs across countries. In addition, concerns have been expressed about the restorative justice premise that an offender is held accountable for wrongdoing. Because the ever-present coercive threat of court underlies the reform, Polk (1994) argues that a number of explicit and implicit pressures operate on an offender to admit guilt, and that restorative justice processes within a coercive justice system thus encourage the presumption of guilt rather than innocence, threatening the due process rights of the offender.

These are important legal, sociological, and conceptual challenges to the restorative justice ideal, and it is imperative that scholars attend to these concerns. However, in the literature critical of under-examined advancement of restorative justice, these legal, sociological and conceptual concerns have dominated. In this special issue, we raise a

different kind of concern about restorative justice. While scholars have focused on the role of restorative justice in a sociological sense, and on the legal dangers and implications of restorative justice, there is a dearth of literature examining the basic psychological mechanisms driving the success or failure of restorative justice procedures. In 2001, Daly and Hayes noted that there was great variety in the restorative justice practices in operation across several jurisdictions, but that there was also strength in experimenting with a variety of restorative justice practices. Ten years later, we contend that there is still a need to capitalise fully on that strength—what are the results of these experiments? Which restorative justice processes or mechanisms have proven successful and which have not? We call for restorative justice researchers to turn their attention to a deeper understanding of the specific features of restorative justice, and the impact that those procedural features have on the success of the process. Attention to this question will help restorative justice scholars to contribute to more effective restorative practice in future.

Organisation of this Special Issue

In this special issue, we feature work by authors who call for a focus on these particular procedural features and their impacts. The special issue is loosely divided into three sections. The first section outlines research that already pursues knowledge about the effects of particular factors in the restorative justice process. The second section features papers that explicitly examine the link between restorative justice theory and practice, testing whether the theoretical importance of particular restorative justice features is empirically supported. The third section focuses on methodologies that may allow the pursuit of more nuanced knowledge regarding the effects of particular factors in restorative justice processes.

The first two papers in this issue demonstrate the way in which particular features of the restorative justice process are already being investigated. Dena Gromet notes that much of the research on restorative justice focuses on the benefits or dangers it presents to offenders, and her literature review outlines research examining restorative justice as a mechanism for responding to victim harm. In this piece, Gromet considers research on factors that cause people to consider retributive versus restorative justice as appropriate mechanisms for responding to victim harm. As well as investigating observers' perceptions of appropriate justice mechanisms, Gromet also considers perceptions by victims themselves about how offences should be addressed.

Similarly, Michael Wenzel, Tyler Okimoto, and Kate Cameron investigate the symbolic concerns addressed by retributive and restorative justice processes. In three experimental laboratory studies, Wenzel et al. demonstrate that support for retributive versus restorative justice procedures is affected by symbolic perceptions of the offence: Support for restorative justice is increased when observers perceive the offence as a violation of shared values, whereas support for retributive justice is increased when observers perceive the offence as a violation of status or power concerns. Motivations to restore shared values lead to support for restorative justice, whereas motivations to redress the status/power violation by the offender leads to support for retributive justice.

Importantly, the two papers in this section are unified by their pursuit of the basic mechanisms and motivations driving support for restorative justice procedures. In a literature review (Gromet) and in three laboratory experiments (Wenzel et al.), these researchers outline and conduct studies pursuing the causal effects of particular factors on the success of the restorative justice process. In particular, these authors are investigating

the basic human motivations that determine whether restorative justice approaches are seen to be appropriate or inappropriate. In doing so, the papers in this section pursue a fundamental question: To what extent, and under what conditions, can restorative justice processes effectively restore a sense of justice once a crime has been committed? The answer to this fundamental question will play a large role in determining the success of restorative justice, in terms of its ability to satisfy victims, reintegrate offenders, and achieve public support.

In the second section of this issue, we feature two papers that explicitly test the link between restorative justice theory and practice, focusing on particular factors theorised to be important in restorative justice, and examining the nature and prevalence of these factors in real-world restorative justice processes. Many scholars discuss the importance of apology, and the transformative role it plays in reconciliation (e.g., O'Hara and Yarn 2002). In an analysis of the content of victim offender mediations in the United Kingdom, Dhimi examines the manner in which apologies actually manifest in restorative processes, and the antecedents and consequences of those apologies. Dhimi focuses on the nature of apology in victim offender mediation procedures, and the degree to which apology is associated with forgiveness of the offender by the victim, satisfaction with the procedure, and various characteristics of the case and stakeholders. By examining the factors associated with apology in these victim offender mediation procedures, Dhimi examines whether the theoretical importance of apology is supported empirically by its manifestation in successful real-world restorative justice processes.

Similarly, Bolitho tests whether factors theorised to be important by restorative justice scholars are actually present in Youth Justice Conferencing procedures in New South Wales, Australia. Braithwaite (2002) argues that the features of restorative justice processes can be organised into three axes of importance: those that are fundamental to the process, those that are important, and those that are non-controllable but beneficial to the process. Bolitho examines how these factors manifest in Youth Justice Conferencing in practice. To do so, Bolitho examines qualitative data derived from observations of Youth Justice Conferences over a three-year period, demonstrating an important role for particular factors that are theorised to be fundamental to restorative justice, but also showing that the absence of any of these particular factors can be compensated for by the presence of others. In this way, Bolitho's qualitative, observational field data complements the other empirical work in this issue, by recognising that restorative justice in practice involves a constellation of individual procedural features, and demonstrating that the complex interaction of several of these features is as important to examine as any individual feature.

In the third and final section of this issue, we address the use of creative methodologies for pursuing knowledge about particular, individual factors that may affect the success of restorative justice processes. Eliza Ahmed and Valerie Braithwaite present an innovative approach to investigating the impact of particular aspects of the RJ process, within the context of an empirical study. These authors investigate the impact of shaming mechanisms on future deviant behaviour. While shaming is theorised to be an integral part of restorative justice processes, the contribution of this piece is to remove the shaming mechanism from the restorative process, in order to directly investigate the impact of shaming itself on offenders' behaviour. In this paper, the authors test the association between constructive shame management and the transition into and out of bullying behaviour in a school context in Australia. By pursuing these research questions, the authors demonstrate that one effective means of studying the impact of particular aspects of the restorative justice process is to remove those factors from the restorative justice process and test their effects, independent of other aspects of the restorative justice experience. In their paper, the authors

reveal the important longitudinal effects of shame management on behaviour, thereby providing an empirical basis for arguing that restorative justice should be functionally conceptualised more broadly than is often the case, as a process eliciting long-term learning and behaviour-change, rather than as a finite event or procedure.

In the final paper of this issue, Alana Saulnier, Kiri Lutchman and Diane Sivasubramaniam review methodologies that have been used to investigate restorative justice processes in the past, and argue for the contribution that can be made to restorative justice knowledge by the more widespread employment of laboratory experiments in this field of research. As well as acknowledging the advantages presented by experimental methods, the drawbacks and weaknesses of laboratory experiments are discussed, as are some ways in which these weaknesses might be overcome, specifically with regard to restorative justice research. In particular, these authors note the difficulty of replicating the restorative justice experience in the laboratory, and the limitations this presents (and need *not* present) to laboratory experiments on restorative justice. Though the use of laboratory experiments in restorative justice research may be intuitively unappealing to many criminologists, primarily due to the artificiality of the experience for research participants, the authors point to the success of other fields of research in the legal system in which laboratory experiments dominate. Ultimately, the authors reason that similar techniques may be used to overcome barriers to realism in laboratory experiments investigating restorative justice processes.

Developing Restorative Justice Research and Practice

The unifying theme of this special issue is the focus by authors on investigating the impact of particular factors of the restorative justice interaction. Importantly, though, one notable feature of this special issue is its diversity: here, we feature a diversity of approaches (empirical and non-empirical), disciplines (criminology and psychology), methodologies (experimental laboratory studies, survey studies, and observational field studies) and data (quantitative and qualitative) in the study of restorative justice across several countries (Australia, Canada, the United Kingdom, and the USA). While each methodology, discipline, and approach has its own strengths and weaknesses, the application of several approaches to investigate a particular problem builds a comprehensive field of research, in which those strengths and weaknesses can complement one another. The fact that a special issue on restorative justice is able to incorporate several different approaches is a sign of the growing maturity of the field, and this diversity of approaches is a strength from which the restorative justice field can move forward.

In closing, I would like to extend my sincere thanks to the authors featured here for their valuable contributions to this special issue, and for their continued investigations into the basic mechanisms by which restorative justice may achieve its renowned success. We hope that this issue serves as a call for an increased focus by researchers on the nuances of the restorative justice process, which will contribute to the creation of increasingly effective restorative justice practice and policy in future.

References

- Barnett, R. (1977). Restitution: A new paradigm of criminal justice. In R. Barnett & J. Hagel (Eds.), *Assessing the criminal*. Cambridge, MA: Ballinger.

- Blagg, H. (1998). Restorative visions and restorative justice practices: Conferencing, ceremony and reconciliation in Australia. *Current Issues in Criminal Justice*, 10, 5–14.
- Braithwaite, J. (1999). Restorative justice: Assessing optimistic and pessimistic accounts. In M. Tonry (Ed.), *Crime and justice: A review of research* (pp. 1–127). Chicago: University of Chicago Press.
- Braithwaite, J. (2002). Setting standards for restorative justice. *British Journal of Criminology*, 42, 563–577.
- Cunneen, C. (1997). Community conferencing and the fiction of indigenous control. *Australian and New Zealand Journal of Criminology*, 30, 292–311.
- Daly, K., & Hayes, H. (2001). Restorative justice and conferencing in Australia. In *Trends and issues in crime and criminal justice*. Canberra, ACT: Australian Institute of Criminology.
- Latimer, J., Dowden, C., & Muise, D. (2001). *The effectiveness of restorative practices: A meta-analysis*. Research and Statistics Division Methodological Series. Canada: Department of Justice.
- Latimer, J., Dowden, C., & Muise, D. (2005). The effectiveness of restorative justice practices: A meta-analysis. *The Prison Journal*, 85, 127–144.
- Maxwell, G., & Morris, A. (2001). Family group conferencing and reoffending. In A. Morris & G. Maxwell (Eds.), *Restorative justice for juveniles: Conferencing, mediation and circles*. Oxford, UK: Hart Publishing.
- Muncie, J. (2005). The globalisation of crime control: The case of youth and juvenile justice: Neoliberalism, policy convergence and international conventions. *Theoretical Criminology*, 9(1), 35–64.
- O'Hara, E. A., & Yarn, D. (2002). On apology and conciliation. *Washington Law Review*, 77, 1121–1192.
- Polk, K. (1994). Family conferencing: Theoretical and evaluative concerns. In C. Alder & J. Wundersitz (Eds.), *Family conferencing and juvenile justice: The way forward or misplaced optimism?* (pp. 123–140). Canberra, ACT: Australian Institute of Criminology.
- Sherman, L., Strang, H., Angel, C., Woods, D., Barnes, G., Bennett, S., et al. (2005). Effects of face-to-face restorative justice on victims of crime in four randomized, controlled trials. *Journal of Experimental Criminology*, 1(3), 367–395.
- Trimboli, L. (2000). *An evaluation of the NSW youth justice conferencing scheme*. Sydney, NSW: Bureau of Crime Statistics and Research.
- Umbreit, M. (1998). Restorative justice through victim-offender mediation: A multisite assessment. *Western Criminology Review*, 1(1), 1–15.
- Weitekamp, E. G. M. (1999). The history of restorative justice. In G. Bazemore & L. Walgrave (Eds.), *Restorative juvenile justice: Repairing the harm of youth crime* (pp. 75–102). Monsey, NY: Criminal Justice Press.
- Zehr, H. (1990). *Changing lenses: A new focus for crime and justice*. Scottsdale, PA: Herald Press.