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# Current Debates over Restorative Justice:

## Concept, Definition and Practice

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**Since its emergence, restorative justice (RJ) has attracted scholars, practitioners and policy-makers from around the world. At the same time, however, such popularity has also generated confusion and a lack of consensus on what is RJ. Different people have proposed different notions of what qualifies as RJ. This article aims to contribute to such an ongoing debate by providing an overall picture of RJ. In this commentary, consideration is given to three aspects of RJ: concept, definition and practice.**

### What is restorative justice?

#### Concept

Developing effective ways of responding to crime has been a long-standing challenge. In this regard, conventional justice systems have been criticised for their ineffectiveness.<sup>1</sup> In conventional justice systems, laws identify punishable acts, and as such, crime is seen as a law-breaking behaviour. As a consequence of criminal behaviour, convicted or admitted wrongdoers are the subject of punishment imposed by the state. Yet, the intent of punishment is not always clear to offenders, due to the lack of moral communication during the justice process.<sup>2</sup> The adversarial nature of conventional justice systems encourages offenders to justify their behaviour by denying or neutralising responsibility for what they have done, because their focus is on avoiding harsher penalties rather than on understanding the impact of their crime on victims.<sup>3</sup>

Conventional justice systems also fail to meet the needs of victims. In the conventional justice process, victims have been neglected.<sup>4</sup> Victims' roles in the conventional justice process are limited and they are disempowered because they are not actively involved in the decision-making process in responding to the crimes committed against them.<sup>5</sup>

In response to these critiques,<sup>6</sup> RJ emerged in the 1970s as a new mode of responding to crime. Daly<sup>7</sup> observed that there are four key scholars who have mainly contributed to developing the early concept of RJ. Albert Eglash<sup>8</sup> first coined the term, RJ. He identified three types of justice (retributive, distributive and restorative) and argued that, while retributive and distributive justice focus on punishing offenders and ignoring victims, RJ focuses on the restoration of the harm caused by crime. Second, Randy Barnett<sup>9</sup> proposed the need for a new paradigm that views crime not as an offence against the state, but as an offence committed by one person against another. He argued that traditional criminal justice systems, which utilises punishment as a major strategy in response to crime, are not effective. Third, Howard Zehr<sup>10</sup> argued for a paradigm shift. Zehr claimed that conventional justice systems have failed to address crimes because it still retains a 'retributive' lens that views crime as a behaviour that violates criminal law. This view discourages offenders from understanding the impact of their crimes on victims. He therefore argued for the need to shift from a 'retributive' lens to a 'restorative' lens, which re-conceptualises crime as a violation of the

1. Crawford, A. and Newburn, T. (2003) *Youth Offending and Restorative Justice: Implementing Reform in Youth Justice*, Devon, UK: Willan Publishing.
2. Walgrave, L. (2008) Restorative Justice: An Alternative for Responding to Crime?, in Shoham, S. G., Beck, O., and Kett, M. (eds.) *International Handbook of Penology and Criminal Justice*, Boca Raton, FL: CRC Press, pp.613-689.
3. Zehr, H. (2002) *The Little Book of Restorative Justice*, Intercourse, PA: Good Books.
4. Strang, H. (2001) Justice for Victims of Young Offenders: The Centrality of Emotional Harm and Restoration, in Morris, A. and Maxwell, G. (eds.) *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Oxford, UK: Hart Publishing, pp.183-194.
5. Barton, C. K. B. (2003) *Restorative Justice: The Empowerment Model*, Sydney, Australia: Hawkins Press.
6. For a critique on such a view, see Richards, K. (2014) 'A Promise and a Possibility: The Limitations of the Traditional Criminal Justice System as an Explanation for the Emergence of Restorative Justice', *Restorative Justice*, Vol.2(2) pp. 124-141.
7. Daly, K. (2013) The Punishment Debate in Restorative Justice, in Simon, J. and Sparks, R. (eds.) *The Sage Handbook of Punishment and Society*, London, UK: SAGE Publications, pp.356-374.
8. Eglash, A. (1977) Beyond Restitution: Creative Restitution, in Hudson, J. and Galaway, B. (eds.) *Restitution in Criminal Justice: A Critical Assessment of Sanctions*, Lexington, MA: DC Health and Company, pp.91-100.
9. Barnett, R. E. (1977) 'Restitution: A New Paradigm of Criminal Justice', *Ethics*, Vol.87(4) pp. 279-301.
10. Zehr, H. (1990) *Changing Lenses: A New Focus for Crime and Justice*, Scottdale, PA: Herald Press.

relationship between victims and offenders and encourages offenders to repair the harm caused by their crimes. Finally, Nils Christie<sup>11</sup> proposed the need to return crime as 'conflict' to those who are directly affected by crime. These are victims, offenders and the community, who are the stakeholders of crime. Christie argued that crime as a 'conflict' between stakeholders is 'stolen' by the state and professionals who represent these stakeholders in the justice process. As a consequence, Christie argued that these stakeholders are disempowered by being deprived of opportunities not only to express their feelings but also to resolve the conflict on their own. As such, at the early stages of its development, RJ was proposed as a conceptual opposition to conventional justice systems, which were claimed to be retributive and to have failed.<sup>12</sup>

However, such an oversimplified dichotomy between retributive and restorative justice has been criticised.<sup>13</sup> As Daly<sup>14</sup> observed, such a view was useful in the early stages of the evolution of RJ to attract and convince a broader audience. However, RJ actually contains some retributive elements in its means to achieve its goals because it imposes some burdens on offenders often through moral persuasion.<sup>15</sup> Retributive and restorative elements are thus not considered mutually exclusive; rather, both should be viewed as interlinked and necessary to achieve justice.<sup>16</sup> Therefore, as an early pioneer of RJ, Zehr<sup>17</sup> changed his original view and argued that it is more common today to view the concept of justice along a continuum from 'fully restorative' to 'non-restorative'.

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There are arguably two core approaches for interventions to be restorative. First, RJ aims to achieve justice by repairing the harm caused by crime. Viewing crime as a violation of the relationship between victims and offenders gives offenders an obligation to put their broken relationship 'into proper balance'.<sup>18</sup> Second, to repair the harm caused by crime, RJ aims to involve the stakeholders of the crime in the decision-making process for dealing with the aftermath of the crime as it is difficult to repair the harm without the involvement of those directly affected.<sup>19</sup>

### Definition

The definition of RJ has been contested.<sup>20</sup> This may partly relate to its development as a concept and as a practice. For example, Van Ness and Strong<sup>21</sup> provide five movements that influenced the development of RJ: informal justice; use of restitution; victims' rights; reconciliation and conferencing; and social justice. Further, Daly and Proietti-Scifoni<sup>22</sup> provide additional reasons for the difficulty in defining RJ, such as global popularity, ambiguity in key terms, various views among RJ theorists and advocates, and applications in transitional justice contexts. Therefore, reaching an

absolute definition of RJ has become a challenging task and different scholars and practitioners try to define RJ differently.

Amongst the various definitions of RJ, however, there are two distinct definitions of RJ that are commonly used: purist and maximalist.<sup>23</sup> The first and perhaps the most cited is Marshall's purist definition of RJ, which he defines as 'a process whereby parties with

11. Christie, N. (1977) 'Conflicts as Property', *British Journal of Criminology*, Vol.17(1) pp. 1-15.

12. Daly (2013) see n.7.

13. Daly, K. (2000) Revisiting the Relationship between Retributive and Restorative Justice, in Strang, H. and Braiwaite, J. (eds.) *Restorative Justice: Philosophy to Practice*, Aldershot, UK: Ashgate Publishing, pp.33-54.

14. Daly (2013) see n.7.

15. Young, R. and Hoyle, C. (2003) Restorative Justice and Punishment, in McConville, S. (ed.) *The Use of Punishment*, Devon, UK: Willan Publishing, pp.199-234.

16. Ibid.

17. Zehr (2002) see n.3.

18. Pranis, K. (2004) 'The Practice and Efficacy of Restorative Justice', *Journal of Religion & Spirituality in Social Work* Vol.23(1/2) pp. 133-157.

19. Bazemore, G. and O'Brien, S. (2002) The Quest for a Restorative Model of Rehabilitation: Theory-for-Practice and Practice-for-Theory, in Walgrave, L. (ed.) *Restorative Justice and the Law*, Devon, UK: Willan Publishing, pp.31-67.

20. Cunneen, C. and Goldson, B. (2015) Restorative Justice? A Critical Analysis, in Goldson, B. and Muncie, J. (eds.) *Youth Crime & Justice*, London, UK: SAGE, pp.137-156.

21. Van Ness, D. W. and Strong, K. H. (1997) *Restoring Justice: An Introduction to Restorative Justice*, Cincinnati, OH: Anderson Publishing.

22. Daly, K. and Proietti-Scifoni, G. (2011) Reparation and Restoration, in Tonry, M. (ed.) *The Oxford Handbook of Crime and Criminal Justice*, Oxford, UK: Oxford University Press, pp.207-253.

23. Dünkel, F. et al. (2015) Restorative Justice and Juvenile Offenders in Europe – Comparative Overview, in Dünkel, F., Horsfield, P., and Parosanu, A. (eds.) *European Research on Restorative Justice: Volume 1 Research and Selection of the Most Effective Juvenile Restorative Justice Practices in Europe: Snapshots from 28 EU Member States*, Brussel, Belgium: International Juvenile Justice Observatory, pp.175-251.

a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future'.<sup>24</sup> This definition focuses on the process of a 'problem-solving approach involving recognition, reparation, reconciliation, and reintegration of victims, offenders, and others personally affected'.<sup>25</sup>

However, such a purist definition of RJ has been criticised for two reasons. First, it is 'too narrow' because it may limit RJ to a voluntary process, despite the fact that the important feature of RJ is to repair the harm caused by crime.<sup>26</sup> Such limits may make it difficult to apply RJ to some cases or for some offenders. Further it also makes it impossible to apply RJ when stakeholders cannot gather nor agree to meet.<sup>27</sup> Second, the purist definition is also 'too broad' in the sense that it does not refer to the possible outcomes, leading to 'no specific boundaries on the kinds of process included'.<sup>28</sup> The process lacks any specific aims, leading to confusion as to whether it is 'an end in itself, irrespective of any outcome' or 'a means to some other end'.<sup>29</sup> Walgrave<sup>30</sup> argued that it is impossible to define a process without its purposes. Moreover, without referring to goals, there might be a risk of leading to unexpected outcomes, which may not be restorative at all.<sup>31</sup>

In response to these critiques on the purist definition of RJ, Bazemore and Walgrave<sup>32</sup> proposed what is called a maximalist definition of RJ: 'every action that is primarily oriented toward doing justice by repairing the harm that has been caused by crime.' Contrary to the purist definition, the maximalist

definition of RJ focuses on outcomes as the essential aim of RJ — repairing the harm caused by crime — and it does not limit RJ to a specific process to achieve that goal. By doing so, maximalists aim to transform all conventional justice practices into restorative ones.<sup>33</sup>

The maximalist definition of RJ is not without its critics. For instance, McCold<sup>34</sup> critiques it for five reasons. First, it does not provide any measure to distinguish 'what is and what is not restorative' because it is not theoretically clear how both restorative and retributive goals are incorporated in the definition.<sup>35</sup> Second, it fails to incorporate stakeholders in decision-making processes, leading to a failure to appropriately address the key component of RJ, which is the personal or relational nature of crime. Third it includes coercive measures as a restorative practice, despite the fact that it claims to be voluntary. Fourth, although RJ is a different paradigm from conventional justice, it does not contain any 'serious challenge to the retributive/deterrent paradigm or the therapeutic/treatment paradigm of justice and legitimizes the goals of both as restorative'.<sup>36</sup> Finally, lacking a clear definition of the central concept of RJ, namely harm, may make it difficult to distinguish RJ from other conventional models of justice.

It has been almost 50 years since RJ originated. However, the debate over its definition has yet to be settled and it remains a challenge. In this regard, Braithwaite and Strang<sup>37</sup> suggested viewing RJ not as a dichotomy between process and outcome but as a continuum 'involving a commitment to both

... without referring  
to goals, there  
might be a risk of  
leading to  
unexpected  
outcomes, which  
may not be  
restorative at all.

24. Marshall, T. F., (1999) *Restorative Justice: An Overview*, London, UK: Home Office. Research Development and Statistics Directorate.

25. McCold, P. (2000) 'Toward a Holistic Vision of Restorative Juvenile Justice: A Reply to the Maximalist Model', *Contemporary Justice Review*, Vol.3(4) pp. 357-414.

26. Bazemore, G. and Walgrave, L. (1999) Restorative Juvenile Justice: In Search of Fundamentals and an Outline for Systemic Reform, in Bazemore, G. and Walgrave, L. (eds.) *Restorative Juvenile Justice: Repairing the Harm of Youth Crime*, Monsey, NY: Criminal Justice Press, pp.45-74.

27. Roche, D. (2001) 'The Evolving Definition of Restorative Justice', *Contemporary Justice Review* Vol.4(3/4) pp. 341-353.

28. Bazemore and Walgrave (1999) see n.26 p.48.

29. Dignan, J. (2005) *Understanding Victims and Restorative Justice*, Maidenhead, UK: McGraw-Hill Education.

30. Walgrave, L. (2011) 'Investigating the Potentials of Restorative Justice Practice', *Journal of Law & Policy*, Vol.36 pp. 91-139

31. Walgrave (2008) see n.2.

32. Bazemore and Walgrave (1999) see n.26 p.48.

33. Walgrave, L. (2010) Restorative Justice Potentials and Key Questions, in Gyökös, M. and Lányi, K. (eds.) *European Best Practices of Restorative Justice in the Criminal Procedure*, Budapest, Hungary: Ministry of Justice and Law Enforcement of the Republic of Hungary, pp.29-45.

34. McCold (2000) n.25.

35. Ibid p.388.

36. Ibid p.396.

37. Braithwaite, J. and Strang, H. (2001) Introduction: Restorative Justice and Civil Society, in Strang, H. and Braithwaite, J. (eds.) *Restorative Justice and Civil Society*, Cambridge, UK: Cambridge University Press, pp.1-13.

restorative processes and restorative values'. Thus, rather than pursuing a concrete definition of RJ, it may be more fruitful to view both process and outcome along a continuum from less restorative to more restorative.<sup>38</sup> However, Daly<sup>39</sup> has more recently claimed the need for a more concrete definition of RJ because while RJ is already at the stage of being assessed empirically, without a concrete definition it is almost impossible to define its effectiveness. Therefore, Daly<sup>40</sup> has changed her previous view, which was that the lack of consensus over the definition of RJ is not fatal because it reflects a variety of ideas, interests and ideologies of justice.<sup>41</sup> Daly<sup>42</sup> has recently suggested that RJ should be viewed as a type of 'justice mechanism', which means not as a type of justice but as 'a justice response, process, activity, measure, or practice'. Therefore, Daly proposes a definition of RJ as 'a contemporary justice mechanism to address crime, disputes, and bounded community conflict' and '[t]he mechanism is a meeting (or several meetings) of affected individuals, facilitated by one or more impartial people'.<sup>43</sup>

Once victims and offenders have had a chance to speak, to ask questions, and to respond, a mediator helps the parties consider how to put things right.

### Practice

Although RJ as a 'meeting' is currently implemented in the different continents of North America, Europe, Australasia, Africa, Latin America, and Asia,<sup>44</sup> they adopt different forms of RJ that vary in operational features.<sup>45</sup> Amongst these forms, there are three primary forms of RJ: victim-offender mediation (VOM); conferencing; and circle process.<sup>46</sup> These forms are considered primary as they share essential components of RJ, such as dialogue-driven

process,<sup>47</sup> and because they have influenced the development of other forms of RJ, such as youth justice panels.<sup>48</sup>

VOM was the first contemporary form of RJ implemented in Ontario, Canada in 1974. In VOM, victims and offenders are first prepared for the process by a trained mediator, where they are told how the process works and what they are expected to do. Victims and offenders are then brought together in a meeting coordinated and facilitated by a trained mediator. In this process, victims explain to offenders how the crime has affected them, and offenders explain what they did and why, and answer questions from victims. Once victims and offenders have had a chance to speak, to ask questions, and to respond, a mediator helps the parties consider how to put things right.<sup>49</sup> VOM is now utilised in most European countries.<sup>50</sup>

In 1990, the New Zealand government introduced conferencing for young offenders with the enactment of the *Children, Young Persons and Their Families Act, 1989*. Conferencing gives a significant role to a 'community of care' in its process. It involves not only victims and offenders but also their supporters and sometimes even community members to support victims and offenders. The conferencing process is generally divided into two phases: story-telling and outcome-discussion. In the story-telling phase, participants express their views and opinions about the crime and its impact. In the outcome discussion phase, the focus of the discussion shifts into what offenders should do to repair the harm caused by crime.<sup>51</sup> Conferencing is

38. Ibid.

39. Daly, K. (2016) 'What Is Restorative Justice? Fresh Answers to a Vexed Question', *Victims & Offenders*, Vol.11(1) pp. 9-29.

40. Ibid.

41. Daly, K. (2006) The Limits of Restorative Justice, in Sullivan, D. and Tifft, L. (eds.) *Handbook of Restorative Justice: A Global Perspective*, Oxon, UK: Routledge, pp.134-146.

42. Daly (2016) see n.39.

43. Daly (2016) see n.39 p. 21, emphasis in the original.

44. Liebmann, M. (2007) *Restorative Justice: How It Works*, Philadelphia, PA: Jessica Kingsley Publishers.

45. Dignan (2005) see n.29.

46. McCold, P. (2006) The Recent History of Restorative Justice: Mediation, Circles, and Conferencing, in Sullivan, D. and Tifft, L. (eds.) *Handbook of Restorative Justice: A Global Perspective*, Oxon, UK: Routledge, pp.23-51.

47. Umbreit, M. S. and Armour, M. P. (2010) *Restorative Justice Dialogues: An Essential Guide for Research and Practice*, New York, NY: Springer Publishing Company.

48. Crawford, A. (2003) The Prospects for Restorative Youth Justice in England and Wales: A Tale of Two Acts, in McEvoy, K. and Newburn, T. (eds.) *Criminology, Conflict Resolution and Restorative Justice*, Hampshire, UK: Palgrave Macmillan, pp.171-207.

49. Umbreit and Armour (2010) see n.47.

50. Dünkel, F., Grzywa-Holten, J., and Horsfield, P. (2015) (eds.) *Restorative Justice and Mediation in Penal Matters – a Stocktaking of Legal Issues, Implementation Strategies and Outcomes in 36 European Countries*, Mönchengladbach, Germany: Forum Verlag Godesberg.

51. Macrae, A. and Zehr, H. (2004) *The Little Book of Family Group Conferences*: New Zealand Style, Intercourse, PA: Good Books.



implemented predominantly in Australia<sup>52</sup> and New Zealand<sup>53</sup> for young offenders (and also some European countries).<sup>54</sup> Also, like New Zealand, conferencing is legislated in all states and territories in Australia.<sup>55</sup>

The third primary form of RJ is arguably<sup>56</sup> the circle process. Drawing upon indigenous practices, a judge, Barry Stuart, first used the circle process in Yukon, Canada in 1992. In the process, the notion of stakeholders is broadened and community members who have an interest in the crime may participate in the process. All of the participants in a circle process are asked to express their feelings about the crime and this continues until resolution is reached. This communication is facilitated and protected by the keeper who is often a community member. The process of the circle may be more ritualised because a 'talking piece' is passed between participants, and the participant who holds it is the only one allowed to speak.<sup>57</sup> The circle process is practiced for indigenous offenders in some countries, such as Australia<sup>58</sup> and Canada.<sup>59</sup>

There are fewer comparative studies between different forms of RJ.<sup>60</sup> While comparing these different forms of RJ may lead to different outcomes,<sup>61</sup> such differences may not be as important as expected. This is because these differences are somewhat blurred in current practices<sup>62</sup> and there are more similarities than differences.<sup>63</sup> Based on their Campbell Collaboration Systematic Review,<sup>64</sup> Strang and Sherman<sup>65</sup> suggest that at this moment conferencing is the only practice that is strongly supported by rigorous evidence because in their review other forms of RJ such as VOM were

excluded for failing to meet rigorous criteria. However, as Daly<sup>66</sup> suggests, one needs to be careful in interpreting such a claim, not only because in the systematic review certain types of crime, such as sex offences, were excluded, but also because the review focused exclusively on *diversionary* conferencing. It is possible that diversionary conferences may have a different effect on victims compared to victims attending conferences conducted at other stages of the justice process, such as post-sentencing. That said, except for the Strang and Sherman systematic review, many rigorous examinations on what is the 'best practice' of RJ have yet to be conducted. This raises a need to conduct such studies for the further development of RJ.

### Concluding remarks

The rapid growth of RJ has led to ambiguity of what is RJ. Since RJ is believed to continue to grow not only in the field of criminal justice, but also in other areas such as in school and workplace, a better understanding of what is RJ has become vital. It is our intention to contribute by providing an overview on the recent debate over RJ. RJ is currently viewed as a continuum from not restorative to fully restorative rather than a simple dichotomy between retributive and restorative justice. Despite a long time period since its emergence, the controversy over the definition of RJ is an ongoing challenge and the 'best practice' of RJ has yet to be identified. Future theoretical debate and research on RJ should contribute to these challenges.

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52. Joudo-Larsen, J., (2014) *Restorative Justice in the Australian Criminal Justice System*, Canberra, Australia: Australian Institute of Criminology.
  53. Maxwell, G. (2013) Restorative and Diversionary Responses to Youth Offending in New Zealand, in Van Wormer, K. S. and Walker, L. (eds.) *Restorative Justice Today: Practical Applications*, Thousand Oaks, CA: SAGE Publications, pp.103-112.
  54. Zinsstag, E. (2012) Conferencing: A Developing Practice of Restorative Justice, in Zinsstag, E. and Vangraechem, I. (eds.) *Conferencing and Restorative Justice: International Practices and Perspectives*, Oxford, UK: Oxford University Press, pp.11-32.
  55. Joudo-Larsen (2014) see n.52.
  56. For example, see the critique by Daly (2016) see n.39.
  57. Pranis, K. (2005) *The Little Book of Circle Processes: A New/Old Approach to Peacemaking*, Intercourse, PA: Good Books.
  58. Joudo-Larsen (2014) see n.52.
  59. Laprairie, C. (1995) 'Altering Course: New Directions in Criminal Justice – Sentencing Circles and Family Group Conferences', *Australian and New Zealand Journal of Criminology*, Vol.28(3) pp. 78-99.
  60. Bradshaw, W. and Roseborough, D. (2005) 'Restorative Justice Dialogue: The Impact of Mediation and Conferencing on Juvenile Recidivism', *Federal Probation*, Vol.69(2) pp. 15-21. and Shapland, J., Robinson, G., and Sorsby, A. (2011) *Restorative Justice in Practice: Evaluating What Works for Victims and Offenders*, Oxon, UK: Routledge.
  61. Walgrave (2011) see n.30
  62. Umbreit and Armour (2010) see n.47
  63. Shapland, J. (2014) 'Implications of Growth: Challenges for Restorative Justice', *International Review of Victimology*, Vol.20(1) pp. 111-127.
  64. Strang, H. et al., (2013) *Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review*, Oslo, Norway: The Campbell Collaboration.
  65. Strang, H. and Sherman, L. (2015) 'The Morality of Evidence: The Second Annual Lecture for Restorative Justice: An International Journal', *Restorative Justice*, Vol.3(1) pp. 6-27.
  66. Daly (2016) see n.39.