

Restorative Justice and Civil Society: Emerging Practice, Theory, and Evidence

Brenda Morrison* and Eliza Ahmed

Australian National University

This special issue focuses on two topical fields emerging within the social sciences: restorative justice and civil society. The broad range of scholarly work in these fields is growing quickly but remains inchoate. The aim of this volume is to begin to forge coherence from a diversity of intellectual perspectives and jurisdictions. The contributors represent a range of disciplines—psychology, social work, law, and criminology—and focus on a range of institutions—schools, criminal and juvenile justice, and family welfare. Some focus more on practice, some more on theory, but together they are building exciting links between theory and practice in two of the most stimulating areas of interest in the social sciences.

Restorative justice has been conceived in the literature in two broad ways. One is a process conception; the other is a values conception. The process conception is characterized by a process that brings together all parties affected by harm or wrongdoing (e.g., offenders, and their families, victims, and their families, other members of the community, and professionals). These parties meet, often in a circle, to discuss what happened, how they were affected and come to some agreement as to what should be done to right any wrongs suffered. The values conception is characterized by a set of values, or principles, that distinguish restorative justice from traditional punitive state justice. The former values healing and restoration of all affected, the latter values accountability to the state through punishment. This volume examines restorative justice in the context of its contribution to advancing civil society through the lens of institutions that are intermediate between the individual and the state.

From the perspective of restorative justice, civil society invests in and values social capital, using the strength of social ties to work constructively, and

*Correspondence concerning this article should be addressed to Brenda Morrison, Centre for Restorative Justice, Research School of Social Sciences, Australian National University, Canberra ACT 0200, Australia [e-mail: Brenda.Morrison@anu.edu.au].

beneficially, through social conflict. In other words, counter to adversarial conflict resolution, the practice of restorative justice seeks to harnesses the power of relationships to strengthen accountability and support mechanisms within civil society. To this end, restorative justice provides a platform for transforming conflict and rebuilding relationships. It is a form of justice that emphasizes the violation of relationships, over and above the violation of rules. With a focus on repairing the harm done, restorative processes have been used to address interpersonal, intragroup, and intergroup conflict. At an interpersonal or intragroup level, restorative practices have been used to address harmful behavior across a range of institutions, addressing issues such as family welfare, criminal and juvenile justice, and school discipline. At an intergroup level, the truth and reconciliation process in South Africa is the most notable example. In the aftermath of apartheid, Desmond Tutu believed that South Africa could only move toward a brighter future by first addressing past wrongs. At all levels of social conflict, restorative justice works toward acknowledging and repairing harm done to individuals and groups; thus, harnessing the capacity for all involved to move forward in healthy and productive ways.

Restorative justice aims to empower participants, through fostering accountability and responsibility between those affected by harmful behavior. To this end, it seeks social and emotional resolution that affords healing, reparation, and reintegration, which in turn ameliorates efforts to prevent further harm. As such, restorative justice has much to offer both individuals and communities. Through giving a voice to all parties affected, it reaffirms the moral and ethical aspect of the role the state and its institutions; more specifically, it affirms individuals' relationship with the state not only on a rational level but also on a social and emotional level.

As we move into the new millennium, in the face of new global forces, restorative justice challenges us with an opportunity to embrace civil society. The challenge is to harness conflict as a point of growth. Restorative justice offers a platform to address the social and emotional tensions inherent to conflict; central obstacles, as well as vehicles, to the development and maintenance of civil society—locally, nationally and internationally. The papers in this issue offer a fresh approach to understanding civil society, through recognizing the value and importance of healthy relationships between individuals and groups, which in turn embody a wide range of social issues. The papers build both theory and practice, which grow hand in hand within this emerging field. A field where the synergy between practitioners and academics is enlightening fresh ideas and insights; a field where practice often drives theory and rigorous empirical testing is used to develop practice. Indeed, the field is rich with ideas to be explored, tested, and developed. The field thus marks a truly Lewinian approach to addressing social problems, recognizing that there is nothing as practical as a good theory, while also recognizing that we can build stronger theory through practice grounded in evidence. As Lewin also said, one does not really understand anything until you try to change it: Transforming

conflict is the change that restorative justice seeks. Each of the contributors in this volume is forging individual and social change through exploring the theory, practice, and evidence base of restorative justice.

Purpose of the Issue

While social psychology has shown potential in putting theory into practice to address the resolution of social conflict, bridging the gap between theory and practice has been a slow process. Brewer (1997) addressed this issue in her provocative Kurt Lewin Memorial Address presented to The Society for the Psychological Study of Social Issues (SPSSI), on its 60th anniversary. Two predominant issues were raised: social psychologists were only beginning to forge an understanding of the interface between individual, interpersonal, and intergroup dynamics; social psychologists were reluctant to develop links with policy makers and practitioners. The field was developing theory without the support of two legs of Lewin's triangle—practice and training. This issue examines the ways in which advocates of restorative justice are building the evidence base that grounds theory, practice, and training. Further, restorative justice is addressing one of SPSSI's primary goals: Understanding and Resolving National and International Group Conflict. The aim of this issue is to affirm this goal of SPSSI and bring together some of the most innovative thinkers who are bridging the gap between theory and practice in the area of conflict resolution through restorative justice.

Organization of the Issue

This special issue is organized around the theme of Restorative Justice and Civil Society. It has two sections; the first on restorative justice in practice, the second on restorative justice in theory. The first section broadens our vision for restorative justice and focuses on what makes restorative justice distinctive to other forms of justice, highlighting developments within juvenile justice in New Zealand, family welfare in North America, and criminal justice in Australia and England. The second section focuses more specifically on the empirical development of the field's rich theoretical base. First exploring the theoretical links with procedural justice; then moving on to develop the theoretical understanding of core social and emotional dynamics.

Section I

This section begins with Declan Roche's paper which reviews the many, and sometimes overlooked, forms of restorative justice that can be found across a wide range of institutions. While these different schemes and practices share the common interest of repairing and strengthening community ties, Roche emphasizes that

the evidence to date cautions against assuming that a restorative justice approach will necessarily always be appropriate, or successful.

The next two papers shift to restorative justice in practice, through focusing on the evidence base of the family group conference model of restorative justice in two different jurisdictions: youth justice in New Zealand, and child and family welfare in Canada and the United States. New Zealand was the first country to formally introduce restorative justice into their youth justice system in 1989 (under their Children, Young Person's and Their Families ACT 1989). The goal was to introduce a new method of delivering youth justice such to maximize: diversion from courts and custodial institutions; the participation of young people, their families and victims in decision making; and accountability for wrongdoing. The central process for achieving these goals became the "family group conference" which involves offenders and victims, their respective families and supporters, coming together to talk through the "wrongdoing" and come to some agreement about ways to repair harm and reintegrate offenders. This model has been extensively studied by Gabrielle Maxwell and Allison Morris, using a range of evaluation techniques. This article overviews these historical developments and critically reflects on the research and learning to date.

We then move to North America where Joan Pennell has been instrumental in the development and evaluation of the family group conference model in the context of child welfare and protection policy. Drawing on the seminal work of the Family Group Decision Making Project in Newfoundland, Pennell highlights examples in locations as culturally diverse as the Inuit, in the far north of Canada, to suburban Santa Clara, California. Family group decision making is a form of restorative justice that aims to eliminate or reduce violence against children and family members, together with promoting wellbeing. The process addresses "the conspiracy of silence" around the abuse while "widening the circle" of those committed to stopping the violence against any family member.

In the final paper of this section, Heather Strang, Lawrence Sherman and colleagues evaluate, using a quasi-experimental design, the effectiveness of restorative justice conferencing in two ways: healing the psychological harm suffered by crime victims and reducing recidivism rates of offenders. Through qualitative and quantitative analyses across four research sites (Canberra, Australia; London, Northumbria, and Thames Valley, in England), these researchers demonstrate that victims who have participated in conferencing report overwhelmingly positive experiences with high satisfaction rates (e.g., decreased anger at their offenders, fear of their offenders). However, questions remain about the conditions under which restorative justice conferencing is likely to reduce reoffending.

Section II

The second section of this issue presents four papers that empirically examine the theoretical evidence base of restorative justice. The first paper presents Tom

Tyler's work on justice in the American context, which highlights the collateral and direct consequences of punitive strategies to rule breaking. Such strategies, he argues, undermines moral development. Tyler's paper provides empirical evidence that procedural justice and restorative justice are effective ways to deal with wrongful behavior that can provide opportunities for rehabilitation and moral education. The paper argues for an integration of three processes—procedural justice, restorative justice, and moral development—to activate people's internal values and encourage the kind of self-regulation that can play a significant role in promoting socially responsible behavior. The challenge is implementing and sustaining a paradigm shift, wherein restorative justice is valued over and above punitive justice.

The next three empirical papers investigate the theoretical relevance of social and emotional responses like shame, guilt, and pride in understanding the underlying social and emotional character of restorative justice. Drawing on data from an Australian randomized trial between court and restorative conferencing, Nathan Harris explores the relevance of shame-related emotions to understanding the way that social institutions seek to censure wrongdoing. The results challenge conventional wisdom concerning the institutional relevance of these emotions, and contemporary theories of the relationship between shame and guilt. In particular, the data show that reintegrative shaming and stigmatizing shaming, the opposing forms of disapproval identified in Braithwaite's reintegrative shaming theory, are associated with very different emotional responses. Significantly, the relationship between shaming and these emotions was also captured by differences between the two means of achieving justice. Compared to court cases, offenders who had participated in a restorative justice conference were more likely to perceive others as being more disapproving of what they had done, more socially reintegrative (compared to stigmatizing), and more likely to acknowledge feeling bad about their actions, without feeling angry and unjustly treated.

Building on Harris's work, Eliza Ahmed and Valerie Braithwaite's work on shame management contributes to understanding how restorative justice can be effective in a bullying context. In this article, the authors draw on central concepts in the restorative justice literature (shame, forgiveness, and reconciliation) and demonstrate that relationships of support, concern, and care are important to the prevention of school bullying through promoting socially adaptive shame management (high shame acknowledgment, low shame displacement). Through examining an alternative model, the authors recognize the challenge of how shame management that is not socially adaptive can foster bullying through reducing forgiveness and reconciliation elicited from "significant others." The authors contend that there are significant implications in these findings for the prevention of bullying through the use of restorative justice in schools.

Integrating the theoretical work of Tyler, Ahmed and Braithwaite, as well as Thomas Scheff, Brenda Morrison examines the significance of social (feelings of pride and respect) and emotional (shame-management) aspects of group life

to understanding bullying behavior across four distinct bullying status groups: non-bullies/non-victims, victims, bullies, and bully/victims. The evidence suggests that the social and emotional group dynamic within the school community is distinctive across these four groups. Morrison argues that central to the process of addressing bullying in schools is managing the social and emotional climate of school, highlighting the importance of developing social ties that foster pride and respect, along with healthy shame management practices. These findings support the use of a range of restorative practices in schools that address the social and emotional dynamic of bullying behavior.

Finally, John Braithwaite draws together the many threads of this volume, using their collective strength as a means of pointing a way forward. He argues that in these early days of research and development, evidence-based practice, working hand in hand with theoretical development, is vital. As the practice of restorative justice evolves and matures, across a range of jurisdictions, the importance of strong empirical links between theory, practice, and policy are vital to a sustained paradigm shift. As the multiplicity of restorative justice innovations has grown, at systemic and grassroots levels, theoretical and evidence-based research has fallen behind. This research base, both quantitative and qualitative, is essential to the realization of holistic justice. The forces of social change demand this evidence base. If this demand is not met, restorative justice will remain at the margins of institutional life. Braithwaite argues that restorative justice is about seizing injustice as an opportunity to rebuild civil society, through nurturing emotional intelligence. This, he believes, is true at all levels of society: family, school, neighborhoods, national, and global.

In summary, this issue presents a multidimensional view of restorative justice. While restorative justice initially emerged as an alternative or adjunct to traditional criminal justice, it has evolved to touch the heart of injustices across a range of jurisdictions. The empirical evidence for restorative justice offered in these papers suggests its potential for empowering individuals and communities, while promoting socially responsible levels of interpersonal, intragroup, and intergroup activity. To this end, this volume provides a basis for making a link between restorative justice and civil society, but there is much more research and development to be done to achieve a tipping point wherein our institutional administration of justice shifts away from a punitive stance, to one that seeks to be more restorative, more holistic.

Dr. BRENDA MORRISON is a research fellow at the Centre for Restorative Justice at the Australian National University, currently seconded to the Jerry Lee Center of Criminology, University of Pennsylvania. The theory and practice of restorative justice and responsive regulation in schools is her primary interest, including the study of schools as a crime reduction mechanism.

Dr. ELIZA AHMED is a research fellow in the Research School of Social Sciences at the Australian National University. She has co-authored a book *Shame Management through Reintegration* (Cambridge University Press) demonstrating the implications of shame in relation to different kinds of wrongdoing, such as drink-driving and school bullying. Eliza's research interests are school bullying, workplace bullying, shame management, interpersonal relationships, and the processes of regulation.

The theory of restorative justice provides a blueprint for moving into the twenty-first century by drawing upon much of the wisdom of the past. In eleventh-century England, following the Norman invasion of Britain, a major paradigm shift occurred in which there was a turning away from the well-established understanding of crime as a victim-offender conflict within the context of community. Little empirical data is available on most restorative justice policies and practices, although a growing number of studies are being initiated. For present purposes, findings that have emerged from the study of the oldest and most well-developed restorative justice intervention throughout North America and Europe will be highlighted. RESTORATIVE 'THEORY' AND 'PRACTICE' IN CONTEXT Arguably, the term 'Restorative Justice' was first introduced in the contemporary criminal justice literature and practice in the 1970s. However, strong evidence suggests that the roots of its concept are ancient, reaching back into the customs and religions of most traditional societies. In fact, some have claimed that the RJ values are grounded in traditions of justice as old as the ancient Greek and Roman civilisations (Braithwaite 2002, 64-68). Defines restorative justice, outlines the evidence on its use and impact, and discusses its current and potential use as a response to crime in Scotland. Critics of restorative justice have highlighted gaps between theory and practice, questioned the sometimes misleading use of the "restorative justice" label, and argued that restorative justice can create issues regarding the proportionality of sentences. Criticisms of restorative justice highlight the need to ensure high quality practice and safeguard against unintended consequences. The current Scottish policy context provides fertile ground for the growth of restorative justice. There are many opportunities for increasing the use of restorative justice in Scotland as a response to crime.