

Restorative Justice – A better approach to justice for victims?

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Victims' Rights

- ▶ Access to the mechanisms of justice



Victims' common grievances

- ▶ Too many victims say they are unhappy, frustrated, even angered by their treatment during criminal proceedings.
- ▶ Arguably, that they do not get a 'fair' chance to have their say is a prime reason they are unhappy.
 - Some victims have an overarching desire to tell their 'truth' but are frustrated by rules and procedures, as well as agreements reached by others.
- ▶ Restorative Justice is (too) often purported to be a panacea; however, are victims better off?



- ▶ There is robust discussion on what restorative justice is or should be (*Daly 2005*)
- ▶ It is neither easy to define, nor is there a single and uniformly agreed definition.
- ▶ It is not *rehabilitation repackaged... It is not (exclusively) part of the victims' rights movement...* (Johnstone 2002)
- ▶ Its aims *do overlap with those of rehabilitation programmes and those of the victims' rights movement.* (Johnstone 2002)



- ▶ Restorative justice
 - ▶ A process to achieve a restorative outcome
(UN 2006)

- ▶ Some existing programmes have restorative elements (e.g. victim impact statements; family conferences; victim-offender mediation (although Braithwaite (2009) distinguishes mediation and RJ)

- ▶ Restorative justice portrayed as an alternative to the limitations of retributive justice (AARJ 2022) ...

- ▶ RJ holds ... response to crime should not only (i) *respond* to the specific incident and the harm it has caused. It should also work to (ii) *prevent* harmful behaviour from recurring, and (iii) *promote* the wellbeing of those affected.

- ▶ “*restoring right relations*”, or “**re-setting relations**” within the community of people affected by the harm.



The vexed question - What is RJ?

- ▶ Some RJ advocates have agreed that the “better contrast is between conventional criminal justice and restorative justice” (Daly 2015, p7).
- ▶ Restorative justice is not a type of justice - it is a justice mechanism.
- ▶ Retributive justice neither a type of justice, nor a justice mechanism.
- ▶ Restorative justice is one of many justice mechanisms under an innovative justice umbrella.



(Daly 2015)

Ways RJ can be delivered

- ▶ **Victim-offender conferencing** - bringing the victim(s), offender(s) and supporters together in a meeting.
- ▶ **A community conference** - bringing together members of a community affected by a particular crime & some/all of the offenders.
- ▶ **"Shuttle restorative justice"** - consists of trained RJ facilitator passing messages back & forth between victims & offenders for low level crime & antisocial behaviour.
- ▶ **Neighbourhood justice panels** - involves trained volunteers from facilitating meetings between victims & offenders for low level crime and antisocial behaviour.
- ▶ **"Street restorative justice"** - usually facilitated by police between offenders, victims & others in attendance at/about time of the incident (e.g. resolution or a conditional caution).

► Some assertions have resulted in

- Misleading characterisations of existing criminal justice systems
- Sweeping statements about the merits of restorative justice
- Unreasonable expectations



- Braithwaite (2002) queries “whether values such as retribution, just deserts, and fair punishment should be accommodated in a restorative justice framework.”
- As Daly (2002) aptly says “not only is retribution part of restorative justice process, it *should be* part of it.”



Pros & Cons of Restorative Justice

► Enhance victim satisfaction (with process and outcome)

- Review - Home Office schemes - 85% of victims were 'very' or 'quite' satisfied with their victim offender conferences (Shapland et al 2007).
- Randomised control study - RJ helped alleviate PTS symptoms for victims of robbery or burglary (Angel et al 2014)
- Victims' satisfaction is generally lower than offenders' satisfaction
- Satisfaction with what? Procedure, information, assistance, compensation



▶ Higher compliance & collection rates than court-ordered compensation

- Compliance is higher when offenders are monitored
- Offenders' apologies - victims have varying views on sincerity
- Some victims sceptical about offenders' motives
- Some victims felt the process (possibly outcome) was too lenient

► Integrates victims' participation and provides recognition of victims' rights

- Programmes limited by victim participation
- Some victims upset by what offenders (and/or their supporters) said
- Some victims found the experience unsettling even intimidating
- Some victims feel worse after participating



▶ Benefits for the community

- ▶ Potential to offer clear and measurable benefits to the criminal justice system and to wider society.
- ▶ Arguments relating to the cost-effectiveness are “thin”.

► Reductions in recidivism, thus prevents victimisation

- Research has produced mixed results
- Most effective in reducing recidivism when offenders are engaged in rehabilitation programmes but this is not unique to restorative justice



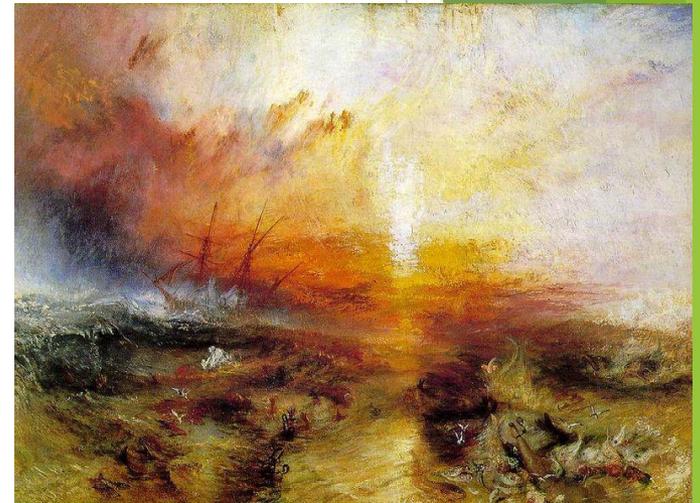
► Improvements in offenders' attitudes toward victims and towards offending

- Unclear if any improvements are transferrable to other victims
- Unclear if changes in attitudes are preventive



► Some additional ‘flaws’ in the practice of RJ

- Offenders have access to legal aid; victims do not.
- Offenders have veto power, victims do not.
- Offender focused rehabilitation greater attention than victim rehabilitation.
- Enforcement of understandings / outcomes.



Restorative justice

Not useful to pit RJ as an alternative to retributive justice

Research provides lessons to inform reform other approaches (mechanisms) to criminal justice

Can augment the administration of criminal justice but should not replace

Best understood as Daly (2015) concludes, as a mechanism of justice



➤ Islamic principles and values of the same kind to restorative justice

- Amicable settlement of disputes through mediation and arbitration while ensuring fairness, equity and justice
- Respect and dignity, and mutual obligations and responsibility for righting wrong
- Emphasis on forgiveness (however, not an apology)
- Heal relationships
- Re-establishes peace at social / community level

- ▶ **Victims must be treated with respect and dignity** (always as per Principle 1 of the Declaration Governing Treatment of Victims, Victims of Crime Act (SA) 2001)
- ▶ **Victim safety** is paramount (power imbalances, amongst other concerns, must be taken into account)
- ▶ **Victim participation** (in-person / representative) must be voluntary, and the victim should be permitted to withdraw at any time during the process (i.e. a right to choose whether to participate or not, and when)
- ▶ **Victim should have the right to have a say on decisions that affect them**
- ▶ **The process must be sensitive to victims' needs and concerns** (i.e. victims' justice (Daly 2012))
- ▶ **Victims must be well informed about the process** (including limitations) **and possible outcomes** (including implications of offender non-compliance)
- ▶ **Victim participation should be properly supported** (including victim preparation and rehabilitation)

- ▶ Timing must be ‘right’ for the victim
- ▶ The practice / process should be designed, developed & delivered in a culturally appropriate manner mindful of victims’ needs
- ▶ Offenders should only be eligible if they accept responsibility for their offending behaviour
- ▶ Suitability should be assessed on a case-by-case basis, not necessarily an class of offence basis
- ▶ RJ in practice should neither be a mask for ‘public justice’; nor a gag on the victim
- ▶ RJ is not suitable for all cases
- ▶ Such lessons (e.g. the importance of victim participation) should be applied at different stages of the ‘existing’ criminal justice system