

Restorative Justice

Student Name

Institutional Affiliation

August 14, 2019

Is Restorative Justice the Wave of the Future?

Introduction

Restorative Justice is increasingly gaining popularity as an alternative to punitive practice in the criminal justice system. Over the years, its advancement and integration to the society has led to its adoption as a conflict resolution approach in different areas such as schools, the juvenile system, and informal conflict resolution and internationally as a part of various criminal justice systems. The purpose of this review is to examine the integral concepts in restorative Justice ranging from practices, principles, challenges, and the implementation challenges to its application to education, Juvenile justice, and within the international scene. The review utilizes the existing literature and legislature of restorative Justice to make conclusions on what the future holds for the justice process. Further, the review explores the process of conflict resolution through Restorative Justice with the aim of not only understanding the intricacies of implementing restorative practices but also its applicability to different conflict scenarios.

Evolution of Restorative Justice Practices

Restorative Justice emerged from discussions on alternative models of resolving conflicts. The model of Justice developed from the evolution of victim-offender programs (VORPS) in the mid-1970s in Canada and the Midwestern US, regarded as traditional by then criminologists to modern practices applicable to different conflict scenarios. However, methods such as victim-offender mediation (VOM), family group conferences, sentencing circles, and victim impact panels came from different communities often unaware of each other but to practice an alternative method to the punitive measures.

Furthermore, the social movements of the 1960s shed more light to the extent of racism in police practices, courts, and prisons, making it necessary to develop systems that hindered the

mass incarceration of African-Americans. Hence, more focus was on developing frameworks that promote de-incarceration actions, prisoner rights, and alternatives to confinement while also supporting victims' rights and restitution of crimes. Hence, scholars and practitioners, acknowledging the need for victim rights left out in the formal system, investigated and brought together practices such as VORPs, VOM, victim advocacy, and family group conferences (FGC) sourced from evidence-based findings in New Zealand (Evanovich et al. 2019 pg. 29). With a keen interest in developing the model of Justice, restorative Justice was then incorporated in 1982 task force report on crime victims and adopted in most informal justice approaches.

Daly & Immarigeon (1998) link the justice model to the need to diversify from the formal court process and uphold the principles of restoration to the victim, the offender, and the communities they live in. The diversification could facilitate a meeting between the offender and the victim, and help guarantee restoration and satisfaction by both entities. Hence, from its inception, the concept of restorative Justice was associated with terms such as reparative Justice, Transformative Justice and informal Justice to signify its significant difference with punitive and formal justice processes (Daly & Immarigeon, 1998 pg. 45). Hence its inception was to account for the areas less addressed by legal court systems such as repairing harms and ruptured social bonds resulting from the criminal case and building relationships between the fundamental entities of the community.

Key principles of Restorative Justice Practices

Restorative practices take different approaches but tend to share the same caucus of principles. The restorative justice council (RJC) identifies restoration as the core principle as it facilitates the primary role of addressing and repairing harm (Gregory et al., 2016 pg. 23). The principle bases on the concept that crime causes harm and justice should focus on repairing the

damage. Voluntarism is also an essential principle as it enables the participation of all entities based on an informed decision (Johnson et al., 2015). The principle ensures that the most affected individuals play an active role in resolution. The restorative practice also has to feature neutrality. It is imperative to ensure that all aspects of the practice are fair and unbiased to participants.

Safety is also an essential aspect of restorative practices as it guarantees the open expression of views on the harm that has occurred and facilitates open communication of issues. Accessibility is also one of the fundamental principles of restorative Justice as it ensures the processes are non-discriminatory and are available to all affected by the conflict or harm (Johnson et al., 2015). Since the justice process takes a subjective approach, it is essential to ensure restorative Justice is accessible to all and is not marred by unconscious racial biases. Respect also stands out as a crucial principle as it emphasizes on having processes that are respectful to the dignity of all participants and those affected by the harm caused (Johnson et al., 2015). The six principles set precedence for effective design and implementation of restorative Justice to different people and communities. As the foundations of restorative practices, they align to the purpose of the process, which is to foster the inclusion of all parties, promote encounters, make amends, and foster reintegration.

Challenges in Community Building

The effectiveness of restorative practices is centered on developing credible and diverse collaborations within the community. Factoring in the community helps in building peace and facilitates effective reintegration to the community. However, some challenges and barriers often hinder the process of community building, making it less effective in some communities. The problems include unsolved crimes that often affect victims who feel that less has been done to

address the criminal cases. Notwithstanding the negative attitude, cases of unsolved crimes create a less cooperative environment which, to a great extent, affects community collaboration and involvement restorative practices.

Issues of social, economic, and political inequalities also undermine the community building prospects of restorative practices. One of the failed attempts of punitive measures is to attain equality by establishing standard punishments that apply to all equally. However, among other factors, the approach has failed as it fails to account for social and economic inequalities that exist in the community. Restorative practices take an equitability pathway that promotes holistic community building. However, the restorative processes have to account for the social and economic inequalities that might exist in a community and their contribution to the case. Being aware of inequalities helps approach the case suitably and address the issues at hand extensively. The processes have to empower the inequitably treated poor, minority victims, and offenders.

Implementation practices of Restorative Practice in various communities

Through a wide range of implementation practices, restorative justice processes are attained effectively, faithfully, and accurately in different communities. In the school community setups, implementation procedures include developing the principal vision, ensuring staff buy-in, fostering the professional development of teachers, and having a full-time RP coordinator. For communities and populations, Hansberry et al. (2014) identifies the use of logic modeling as the best approach to implementation. The approach involves assessing the current situation, providing evidence and best practice, utilizing inputs and activities, and finally evaluating outcomes. While assessing the situation, implementation practices involve reviewing community

readiness, engaging stakeholders, identifying community champions of RP, and attaining buy-in from all stakeholders.

During the implementation of RP, it is imperative to have a training program that prepares coordinators and supports effective utilization of RP. After training a pilot phase should be established where restorative practices are used by the trained individuals who then receive constructive feedback on how to ensure the training is a good fit for the company. Further, steering committees should be established to facilitate communities of practice that help the coordinators improve their approaches through technical assistance, offer space for reflection, and support fidelity as well as practice delivery. Engaging participants in gauging the effectiveness of RP, self-reflection, and assessment by communities of practice also helps monitor progress and identify potential hindrances. Taking a proactive approach in utilizing the implementation practices guarantees useful application and use of restorative practices.

Restorative Practices in Education

Restorative practices are taking shape in educational policies and are a potential mainstay approach in addressing discipline issues. Proponents of its extensive use hold that the restorative practices enable institutions to shift from reacting rule violations and misbehavior by punishment and instead take a constructive and cooperative approach to resolve disciplinary problems. In schools that have adopted the approach, practices are designed to attain the address disciplinary issues through prevention, intervention, and reintegration. Practices such as circles of sharing allow learners to resonate with each other and enhances accountability and ownership hence acting as an approach to prevention. In the cases of conflict or indiscipline, RJ brings mediation to schools, thereby creating an environment of relationship building and sufficient conflict

resolution. Ideally, restorative practices create a supportive environment that aligns with the educational sector's aim of facilitating holistic learning and development.

The current approach to discipline, well known as the zero-tolerance approach, has been in existence for the past three decades. However, it has caused much more harm to student characters than good, as studies link the approach to future disciplinary problems and exclusionary drawbacks, which unfairly create an achievement gap for minorities. Hence, school districts are, therefore abandoning the approach for a well-scrutinized approach that promotes behavior development and has positive outcomes on discipline; restorative Justice. Benitez (2017) asserts that Restorative Justice (RJ) is considered much better in the sense that retribution is minimized as well as the elimination of the school to jail pipeline. RJ is has been accepted widely and proven effective with schools that have successfully implemented the program managing to reduce suspensions by up to 87% in a period of three in Oakland Unified School District, California. Also, per Benitez, (2017) the merits that come with it outweigh its disadvantages, making it better for the future of American children as the model promotes relationship building and equitability while engaging all the stakeholders.

Ideally, the restorative approach aims at reforming the offender and compensating the victims as well as repairing the damages made in the process; the broken relationship is restored through dialogues and advice. Offenders are often advised to apologize and at least make promises of not repeating the same in the future. In that manner, RJ should be applied to students from very tender ages (Benitez, 2017). Benitez (2017) suggests that should this be implemented, violence in schools shall be minimized, the climate at schools will be safer than ever before, criminalization of students shall be eliminated entirely, and most importantly, students will get to learn the valuable life coping skills, which will make them better persons in their future lives.

Restorative practices do not only apply to students but their parents as well. It is so unfortunate that parents never got to learn about the RJ approach and as such, apply the previous mechanism in addressing concerns related to the discipline to their children. RJ provides a better platform for personal development when well applied and at correct timing. Another advantage that comes with it is its longevity since; children learn how to handle themselves and cope with mistakes now and again (Payne & Welch, 2015). In the end, they shall also impact the same to the generation after them, which will ensure the continuity of discipline in society. Accordingly, the use of restorative practices in schools will increase in the future as more schools are finding ways of making it applicable to their environment (Walker, 2016). Furthermore, effective utilization of restorative Justice facilitates the administration of equity in the educational system, and functional outcomes enhance the acceptance of RJ informal systems.

Restorative Practices in Juvenile Justice

Besides schools, restorative practices have also been widely utilized in juvenile systems. In these systems, restorative practices target young offenders such as low-risk youths, and first-time offenders and can happen within or outside the juvenile justice system. The implementation of restorative practices has been found to reduce the rates of delinquency, improve the victims' beliefs on fairness, and help enhance restitution and repatriations among offenders (Wilson et al., 2017). Hence the use of the approach in the juvenile system has led to better outcomes for both the offender and the victim and proven effective in juvenile systems. Restorative practices, however, still face the challenges of lack of federal law support.

The theoretical framework of a restorative justice emphasizes on stabilizing the balance offset as a consequence of crimes (Wilson et al. 2017). The most crucial aspect of RJ in juvenile Justice, in this case, is the dialogue between the victim and the offender. Both parties have to

first agree to the calling of the meeting and, after that, comply with the set regulations. There are various programs designed for the sole purpose of ensuring a triumphant ending, which include: victim-offender mediation, sentencing circles, and family group conferencing. After many tests done over the past decade, the retroactive programs for juvenile offenders have been proven functional and practical, and delinquent behavior reduction is guaranteed (Wilson et al., 2017). Additionally, outcomes from victims are considered as much satisfaction and absolute fairness.

Restorative Practices on the International Scene

When looking at Restorative Justice from a global point of view, it is evident that the world sees the vitalities of embracing and making it a priority. An expansion of RJ to the outside world only means that, indeed, RJ has much more realistic response to crime compared to the other mechanisms (Aertsen et al., 2013). Undoubtedly, as elaborated by Aertsen et al. (2013) the global acceptance has to be as a result of the inherent social values of the facts sustaining RJ as well as the quality of practices of the programs run by it. Despite it being incomplete, RJ happens to be a composite and an active realm of diverse beliefs and options from numerous contexts (Aertsen et al., 2013). Wong, & Tu, (2018) note that RJ can be described as a field on its own where well-elaborated ways of handling the aftermath of crime are formulated while articulating the more significant part of political and socio-ethical agendas.

Brain research into Restorative Practices

Neuroscience research also supports the outcomes of restorative practices. The research holds that a human brain develops new neural pathways to fix a person's damaged morality. Hence one's environment affects the neural brain pathways development. Van Ness & Strong (2014) investigate the phenomenon using convicted criminals and note that social isolation and exclusionary antics limit the growth of the brain part that controls emotion, the amygdala. The

scientist notes that by using restorative practices that bring together the offender and the victim and initiate restitution, the convicted offender begins to develop the amygdala which in turn helps in the rehabilitation process and could instigate a behavioral change. The findings uphold that by engaging offenders in restorative practices, they would develop new neural pathways that could help grow morality as a part of human development. More research on the link between different restorative practices and brain development as well as the indicators of changed behavior could help understand the phenomenon and guide future utilization of restorative Justice informal criminal justice processes.

The Difficulty and complexity of implementing Restorative Practices

Besides being lauded for its inclusivity and focus on making amends, studies have attributed the approach to a substantial reduction of repeat offending, reduction in post-traumatic stress symptoms and costs for victims and increased satisfaction with the Justice rendered and a reduction in recidivism. Despite these evidence-based conclusions, the implementation and utilization of restorative Justice are restricted churches and juvenile programs that handle minor cases (Suzuki, & Hayes, 2016). The shortcomings facilitating the slow integration of restorative justice to the criminal justice system include the challenges of developing support networks for criminal cases and the readmission of violent offenders back to society. The drawbacks have continually obstructed the use of restorative justice within the American criminal justice framework.

The current structure of the criminal justice system is not designed to work efficiently with restorative Justice. The structure upholds the truth and tests for it in its processes. These objectives often fail to hold people accountable and heal from harm and end up neglecting a meeting between the offender and the victim. This makes it hard to have a dialogue between a

victim and the offender. To address these complexities, it is imperative to call for standardization of models and facilitation of design as well as the alignment of resources for easy access by RP practitioners.

Policy development in the criminal justice system is also complex as it is hard to meet the needs of all stakeholders. Hence, lack of a consensus, the policy change process is slow, and may not adequately receive the support of all stakeholders. As a consequence, critics hold that the approach may not be too limiting hence underlining coalition of all stakeholders (Suzuki, & Hayes, 2016). Furthermore, RJ faces sustainability issues due to challenges in funding and addressing the time component of the change. Also, there is a limited number of trained practitioners for a broad population making it difficult to make the services available to all. Addressing these issues, coupled with the creation of awareness on RP, might help in attaining a consensus among all stakeholders.

Restorative Dispute Resolution Intervention

Case Scenario

After a party at a friends' house Jayson 17, a final year in high school was advised by friends to hail a cab as he was drunk. However, he decided to drive home as he thought it was not fair. On his way speeding Jayson bumped into an oncoming vehicle from the left. While Jayson had minimal scratches, the passengers of the vehicle, a mother and her three-year-old daughter were severely injured and were hospitalized for three days. Upon investigation, the police found Jayson in possession of a roll of marijuana.

To address the conflict effectively, Jayson has to fully understand the consequence of his actions on the victims and receive assistance with alcohol and substance abuse. Hence, in this case, the best restorative approach is to involve the offender and the victim in a small community

conference. The victim-offender conference will engage stakeholders such as the victim, the offender, family members from the victim and the offenders' side, teachers, relevant community representatives, and two practitioners to organize and facilitate the meeting. All stakeholders will be requested to take part in the meeting voluntarily and will be informed before the meeting.

The practitioners will start the meeting with an introduction and ensuring ground rules are established. The victim will then be allowed to tell her story and communicate her feelings after the accident, what happened and how it affected their lives. The offender will also be given uninterrupted time to share his thoughts and feelings about the issue and his resolution. The practitioners will then moderate an exchange between the offender and the victim and allows each to express their feelings openly. While an apology will be in written form by the offender, the victims' family will be given private time to deliberate. An agreement will then be signed by the offender depending on agreed deliverables for restitution and reparation. The practitioners will outline the agreements, set milestones for the offender such as going to rehab, not driving, and ensure that the offender and the offender's family are aware and agree to these conclusions as well as the victim in the presence of the offender's teachers and community representatives. A follow-up plan will be established, followed by debriefing on the case. Using the intervention will help the victims heal psychologically and get the answers they are seeking while also contributing to the change in behavior for Jayson that he will not attain in prison.

Conclusion

Restorative Justice is a non-retributive mechanism used with an emphasis on accountability and conflict resolution through dialogue amid the conflicting parties inclusive of the youth responsible. In many cases, when describing or determining RJ, many people emphasize on the process, process and outcome, and the outcome. Restorative Justice focuses on

addressing concerns from victims as well as the offender instead of punishing criminals for their wrongs. With continued research on the different applications, restorative practices are a mainstay in schools and juvenile systems. However, obtaining a consensus on their application in adult criminal cases and developing policies that guide their application is yet to be achieved. Attaining these policy frameworks will enable the use of restorative processes...

References

- Aertsen, I., Parmentier, S., Vanfraechem, I., Walgrave, L., & Zinsstag, E. (2013). An adventure is taking off. *Why Restorative Justice: An International Journal?*.
- Benitez, D. (2017). A Leadership White Paper Submitted in Partial Fulfillment Required for Graduation from the Leadership Command College.
- Daly, K., & Immarigeon, R. (1998). The past, present, and future of restorative justice: Some critical reflections. *Contemporary justice review, 1*(1), 21-45.
- Evanovich, L. L., Martinez, S., Kern, L., & Haynes Jr, R. D. (2019). Proactive Circles: A practical guide to the implementation of a restorative practice. *Preventing School Failure: Alternative Education for Children and Youth, 1-9*.
- Gregory, A., Clawson, K., Davis, A., & Gerewitz, J. (2016). The promise of restorative practices to transform teacher-student relationships and achieve equity in school discipline. *Journal of Educational and Psychological Consultation, 26*(4), 325-353.
- Hansberry, W., Williams, S., Lennox, J. B., George, G., Abramson, L., Hutchison, K., ... & Casey, M. (2014). *The psychology of emotion in restorative practice: how affect script psychology explains how and why restorative practice works*. Jessica Kingsley Publishers.
- Johnson, T., Quintana, E., Kelly, D. A., Graves, C., Schub, O., Newman, P., & Casas, C. (2015). Restorative Justice Hubs Concept Paper. *Revista de Mediación, 8*(2), 2340-9754.
- Payne, A. A., & Welch, K. (2015). Restorative justice in schools: The influence of race on restorative discipline. *Youth & Society, 47*(4), 539-564.
- Van Ness, D. W., & Strong, K. H. (2014). *Restoring justice: An introduction to restorative justice*. Routledge.

- Suzuki, M., & Hayes, H. (2016). Current debates over restorative justice: Concept, definition and practice. *Prison Service Journal*, (228).
- Walker, L. (2016). Restorative Practices for Juveniles in Hawai'i, United States. In *Interpersonal Criminology* (pp. 119-128). CRC Press.
- Wilson, D. B., Olaghere, A., Kimbrell, C. S., George Mason University, & United States of America. (2017). Effectiveness of Restorative Justice Principles in Juvenile Justice: A Meta-Analysis.
- Wong, D. S., & Tu, K. H. (2018). Restorative justice for delinquents in Hong Kong: current practices and challenges. *Asia Pacific Journal of Social Work and Development*, 28(3), 178-191.