

Reimagining Restorative Justice: Empowering Agency and Accountability

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Outline

- ▶ Reflections on RJ and theory development
- ▶ From theory to practice: the role of empowerment
- ▶ Agency and Accountability as keys to empowerment

Defining Restorative Justice?

- ▶ Marshall (1999)
 - ▶ 'a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future'
- ▶ Zehr and Mika (2003)
 - ▶ Crime as violation of relationships, victim, offender, community
 - ▶ Violations create obligations and liabilities
 - ▶ RJ seeks to heal and put right wrongs, including dialogue, consent, reconciliation
- ▶ Dignan (2005), three elements:
 - ▶ Putting right the harm caused by the offence
 - ▶ Balance the offender's personal accountability with the rights of the victim to reparative redress
 - ▶ Process that is inclusive and non-coercive, which encourages participation on how the offence should be dealt with.

Restorative Justice Practice

- ▶ RJ programmes worldwide vary considerably:
 - ▶ What they do
 - ▶ How they achieve their outcomes
 - ▶ Levels to which they are restorative
 - ▶ How they have developed in the local situations
 - ▶ Extent of integration into existing criminal justice procedures
 - ▶ Extend to social and political conflict transformation (South Africa, Truth and Reconciliation Commission; Rwanda, Gacaca courts; Northern Ireland, Criminal Justice Review)

Impacts

- Most victims are happy with conferencing
- Most victims positively fed into the restorative aspects of conferencing
- Most victims want to help the offender and few want retribution or vengeance
- Offenders found the process challenging
 - ▶ Held them to account
 - ▶ Face their victim
 - ▶ Greatly appreciated the opportunity to 'put things right'
- Emerging results positive in terms of reducing re-offending and re-conviction

Where is RJ theory?

- ▶ RJ theory has *broadened* but not *deepened*.
- ▶ Rapid development of practice has outpaced theory.
- ▶ Abstract notions of 'conflict' and 'harm' are not always useful.
- ▶ Common focus on either 'process' or 'outcomes' as opposed to how these might work in tandem.

Advancing RJ theory in criminal justice

- ▶ Need to refine theory to reflect how RJ is increasingly used within criminal justice context .
- ▶ Need to theorise RJ as a ‘fully-fledged’ and mainstreamed response.

Unpicking RJ Theory

- ▶ What is being restored?
- ▶ *From whom, to whom?*
- ▶ What is the nature and form of the *process and outcome?*
- ▶ In answering these questions, how can we reimagine theory?

What is being restored?

From whom, to whom?

- ▶ The legalistic approach: loss or damage resulting from a breach of duty.
- ▶ A criminal approach: crime and punishment
- ▶ The relational approach: Crime is seen as a 'wound in human relationships' that 'creates an obligation to restore and repair' (Zehr, 1990)
- ▶ A moral debt?
- ▶ The role for the state?

What is the nature / form / aim of the outcome?

- ▶ Material redress: compensation, repair or restitution of property.
- ▶ Symbolic redress: community reparation, apologies, undertakings / promises of non-repetition.
- ▶ The role of punishment?
- ▶ The role of forgiveness?
- ▶ The role of rehabilitation and reintegration?

Multiple values, concepts and principles of best practice behind RJ

Consent

Empathy

Respect

Reintegration

Trust

Fairness

Equality

Apology

Remorse

Dialogue

Voice

Forgiveness

Theoretical and Practice Debates

- ▶ Focused on:
 - ▶ Restorative Justice as a *Process*
 - ▶ Restorative *Outcomes*
 - ▶ *Research and evaluations often practice rather than theory based*

Empowerment: Differentiating Criminal Justice from Restorative Justice

- ▶ Crime and Disempowerment
- ▶ Criminal Justice and Disempowerment
- ▶ Restorative Justice and Empowerment

Empowerment as an umbrella Theory for RJ

- ▶ Evolution of Empowerment Theory in Social Psychology (Zimmerman, 2000)

a process involving mutual respect, critical reflection and group participation , through which people lacking control are given greater access, democratic participation and the ability control their lives'

Values and Concepts

Principles of best practice



Empowerment Theory



Restorative Process

Restorative Outcomes

Elements of Empowerment: Agency and Accountability

- ▶ **Agency** refers to the capacity of participants to make choices and actively participate in decision-making processes.
- ▶ **Accountability** refers to the idea that participants actively take responsibility for the decisions and outcomes of the proceedings.



▶ Restorative Agency

- ▶ Giving/allowing, 'power to', capacity to make choices, involvement in process
- ▶ Broadly relates to the 'process' of delivering restorative justice

▶ Restorative Accountability

- ▶ Accepting accountability for behaviour/actions and creating obligations and commitments
- ▶ Broadly relates to the 'outcomes' of restorative justice

Agency in Practice



Offender	Victim	Community
<ul style="list-style-type: none">• Providing answers to questions,• Hearing the impact of their actions / appreciating the harms caused• Owning up and apologising	<ul style="list-style-type: none">• Active participation• Posing questions• Space to tell their stories• Accepting / Rejecting apology	<ul style="list-style-type: none">• Inclusivity / multi-level representation• Providing 'public interest' input• Recognition of 'community harm' and the broader social consequences of crime

Accountability in Practice

Offender	Victims	Community
<ul style="list-style-type: none">• Accepting responsibility• Being willing to be held to account• Contributing to and agreeing to make restoration• Engaging in tailored interventions to assist with reintegration	<ul style="list-style-type: none">• Playing an active role in creating obligations for the offenders (eg, by asking questions, contributing to the plan)• To consider (accept or reject) the explanation / apology of the offender	<ul style="list-style-type: none">• To inform outcomes on how plans can be best tailored to the needs of the community• Involvement of civil society in delivery of reintegration plans• Communication of public denunciation

The Agency- Accountability Framework

- ▶ Seeks theoretical clarity for:
 - ▶ Purpose and justification for RJ within CJ
 - ▶ Effective practice for the delivery of RJ within CJ
 - ▶ Informs research, evaluation and analysis
- ▶ Emphasises the opportunity to change that provides individual Agency and allows for personal and collective Accountability through a forward looking paradigm.
- ▶ Links with desistance, rehabilitation and normative debates