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Restorative justice in the 21st century: making emotions mainstream

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RESTORATIVE JUSTICE IN THE TWENTY-FIRST CENTURY: MAKING EMOTIONS MAINSTREAM

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Introduction

Although we are fed a steady diet of 'courtroom drama' in popular culture, the reality of court is more banal. Jury trials are rare, most offenders plead guilty, and cases are routinely processed with bureaucratic and administrative gusto. If emotions are expressed, they generally take the form of seemingly contrived indignation of judges and lawyers during a sentencing hearing. Victims are sometimes invited to give impact statements in select cases, offenders rarely speak at all.

This chapter will explore a very different type of justice encounter, one that puts the emotional expressions of victims, offenders, and community members at the centre of the interaction. Restorative justice involves bringing together people who have been affected by a

crime to take part in a discussion around what happened, how people were affected, and how to make things better. Implicit in this approach is a model of justice that reconceptualizes crime as an offence against a particular person or community, rather than simply a violation of state law (Christie 1977). If crime is about people as well as law, then justice should be about repairing relationships between those people in addition to more abstract notions of criminalization and desert.

Restorative justice has been around since at least the 1970s in Western justice systems, though it arguably has roots in more ancient forms of dispute resolution (Braithwaite 2002a). Once conceived of as a 'new lens' through which to view justice (Zehr 1990), it is increasingly seen as a complementary part of wider criminal justice (Hoyle 2012; Shapland *et al.* 2006). Today restorative justice practices can be found across most of the world. In England and Wales, the 2014 Restorative Justice Action Plan sets out an ambitious vision for the expansion of restorative justice, with the goal of ensuring restorative justice is available to victims of crime and at all stages of the criminal justice process, irrespective of the case, the offence, the offender's age, or the location of the crime (Ministry of Justice 2014). Scotland also has a robust approach to restorative justice, with options available to victims of youth crime (Scottish Executive 2005) and limited diversion schemes

for adults (Kirkwood 2010). Northern Ireland has perhaps the most integrated and entrenched system for restorative justice, with the 2002 Justice (Northern Ireland) Act providing a statutory basis for the use of restorative justice for nearly all types of youth offences (Jacobson and Gibbs 2009; Payne *et al.* 2010). Elsewhere around the world restorative justice has gained momentum with legislation, government initiatives, and NGOs providing some form of restorative justice across Australia and New Zealand, Europe, and North America (Galaway *et al*. 1996; Larsen 2014, Maxwell and Liu 2007). Promising restorative justice initiatives also lie outside the Western world, most notably the various peace-building activities in the Pacific Islands, the Middle East, and parts of Africa (Braithwaite 2002a; Braithwaite and Gohar 2014).

It can be said with some confidence that restorative justice has now emerged as a mainstream option for victims and offenders for a range of offences and contexts across the world (London 2011; Shapland 2014). This is perhaps why of all the editions of the *Handbook*, this is the first to include a full chapter on restorative justice.[1] On the other hand, it can also be seen as one of the more over-hyped criminal justice initiatives in modern times. Even with significant

[1] Restorative Justice was discussed in previous editions of the Oxford Handbook, in both Carolyn Hoyle's and Lucia Zedner's chapters on victims and the criminal justice process.

investment in restorative justice schemes around the world, case flow remains relatively low and support can be lukewarm (Rossner *et al.* 2013; Shapland *et al.* 2011; Wigzell and Hough 2015).

And yet restorative justice has proven enormously compelling to both criminologists and politicians (even Oprah Winfrey is an advocate, see Richards 2005). A particular strength is that it can appeal to both the political Right and Left, to victims' organizations and to prison activists. This is perhaps because it can suit various, and at times conflicting, justice and political objectives: to empower victims, to reduce offending, to include communities in the justice process, to save money, and to reduce incarceration. It also stands out as a process that focuses on emotions and building social bonds in a criminal justice system that is increasingly bureaucratized and depersonalized (Garland 2001). Indeed, its popularity may stem from the fact that it provides a veneer of social cohesion that masks more oppressive criminal justice practices (Bottoms 2003).

The rise of restorative justice in different contexts to suit different issues and ideologies has led to a significant amount of confusion and debate about what it actually is, and what it purports to do. One source of this confusion is that at times restorative justice is conceived of as a normative theory of how justice ought to be and at

other times it is limited to an explanatory account of a specific process (Braithwaite and Pettit 2000). This chapter seeks to clarify the normative and explanatory aspects of restorative justice as a social movement, practice, and criminological theory. This chapter examines competing definitions of restorative justice, the principles and goals that underlie it, the empirical research surrounding it, and the explanatory theories that seek to account for its successes and failures. It concludes by surveying the current sites of debate and tension within the restorative justice community, and the relationships between theory, research, policy, and practice.

What is Restorative Justice?

Defining a concept that has captured the imaginations of criminal justice practitioners and criminologists for many decades should be a relatively straightforward task. The term restorative justice has been used countless times as something of an omnibus term to describe various innovations in criminal justice. Practices include activities such as victim–offender mediation, family group conferences, restorative conferences, restorative cautions, sentencing circles, and community reparation boards. Given this diversity, it is not surprising that it has proved difficult to reach a consensus about its definition. This has

resulted in significant confusion, obfuscation, and contestation (Doolin 2007; McCold 1998; Johnstone and Van Ness 2007).[2]

One source of confusion is that restorative justice has been defined at times as a set of values and other times as a practice (Braithwaite 2002b; Marshall 1999; Wright 1991). It has been referred to by some scholars as 'more of an idea, philosophy, set of values, or sensibility than a single and uniform set of practices of processes' (Menkel-Meadow, 2007: 179). This approach is attractive in that it creates a wide umbrella for restorative practices. For this reason, Johnstone (2011) argues that those who seek to define restorative justice should focus on 'the range of goals and values embodied in the practice of restorative justice' rather than viewing restorative justice 'simply as a new technique for controlling crime' (2011: 5). From this perspective, the goal for the future of restorative justice is to 'cement a common core of values and ethics' (Shapland 2014: 124).

[2] This debate goes well beyond the scope of this chapter. I am taking the relatively narrow conception of restorative justice as it is used in domestic criminal justice contexts. There are also restorative justice agendas in other organizational settings, most notably schools and workplaces (Johnstone, 2008). Restorative justice is also a concept associated with political reconciliation in post conflict societies, such as truth commissions and other peace building programmes. Restorative justice in domestic criminal justice may well be a different animal approaches taken in schools, workplaces, and in international human rights/ transitional justice.

Other scholars seek to define restorative justice as a specific practice or a procedure (McCold 2000). They argue that while it is important to articulate its underlying values and aspirations, restorative justice needs to be defined in concrete terms and 'not [as] an alternative to retributive justice, not a new way of thinking about crime and justice, and not a set of aspirations for social change' (Daly 2016: 5). One reason for this approach, most relevant to criminologists, is that defining it as a practice allows it to be subject to empirical inquiry.

This approach is taken in the widely used definition by the Home Office researcher Tony Marshall:

> Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future. (Marshall 1999: 5).

This definition has proliferated across the restorative justice world, and appears in most books and articles on the subject. The key element of this definition is that it is a practice (people 'come together' to 'deal' with something). This definition also includes a forward-looking element (dealing with 'implications for the future').[3] However, Marshall prefaces his definition by stating that restorative justice 'is not any particular practice, but a set of principles which may orientate the

[3] For a thorough critique of this definition, see Dignan (2005).

general practice of any agency of group in relation to crime' (1999: 5). This conflation of practice and principle has confused many.

Embedded in Marshall's definition is a second source of confusion about restorative justice. It has been variously defined as a process or an outcome (or both). A process-based definition stresses dialogue and cooperation. While most definitions include some description of a process, many also incorporate an emphasis on future outcomes. This is hinted at in the Marshall definition but not elaborated on. This can include a focus on 'repairing the harm' through apology, forgiveness, repayment, or some other symbolic or material reparation (Retzinger and Scheff 1996).

For instance, the Ministry of Justice 2014 Action Plan for Restorative justice expands upon Marshall's definition:

> The MoJ defines restorative justice as the process that brings those harmed by crime, and those responsible for the harm, into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward (2014: 3).

This definition incorporates elements of both process and outcomes. 'Repairing the harm' may include apology/forgiveness, symbolic or material reparation, or some other form. 'A positive way forward' likely refers to a commitment on the part of the individual to stop offending. This is made more explicit in the definition given by the New South

Wales adult restorative justice programme, where participants 'work together to find ways that can help heal the harm and help prevent the offender engaging in offending behaviour in the future'. (New South Wales Department of Justice). An outcomes-based definition is perhaps more inclusive, as it could include cases where victims are not willing to consent to a restorative justice process (Dignan 2003).

It is certainly expected that positive outcomes will result from a restorative justice process. But a danger of including outcomes in a definition of restorative justice is that there is no clear reason why certain outcomes will be reached in all cases, particularly when the process is dominated by the unique needs and desires of different people in specific contexts. As restorative justice is mainstreamed there is a danger that a focus on on outcomes will come to dominate (Shapland 2014), and lead to a one-size-fits-all model. For instance, offenders could be compelled to apologize, or victims to forgive, presenting a danger to the integrity of the practice.

Recently, Daly has suggested that restorative justice is best defined as a justice mechanism (2016):

> Restorative justice is a contemporary justice mechanism to address crime, disputes, and bounded community conflict. The mechanism is a meeting (or several meetings) of affected individuals, facilitated by one or more impartial people. Meetings can take place at all phases of the criminal process,

> pre-arrest, diversion from court, pre-sentence, and post-sentence, as well as for offending or conflicts not reported to the police. Specific practices will vary, depending on context, but are guided by rules and procedures that align with what is appropriate in the context of the crime, dispute, or bounded conflict (Daly 2016: 14).

This is a rather useful definition, as it avoids the imprecision and confusion of alternative approaches.[4] It is also a criminological definition, in that it can be used to develop an empirical agenda. In this definition, restorative justice is a *practice* and a *process*, not a *value* or an *outcome*. Certain values underpin the practice, and those values can and should be debated and adjusted in different contexts. Similarly, restorative justice processes are likely to have some kind of an outcome, but this will depend on the legal, procedural, and cultural context in which it takes place. Potential values and outcomes expand and contract in different situations; elements of the process remain the same.[5]

[4] Note that this definition excludes practices that are sometimes included under the restorative justice umbrella, such as indigenous courts, problem solving courts, and truth commissions. It also presents a challenge to contemporary practices that might have been termed 'partly restorative' by McCold and Watchtel (2003), such as some forms of restorative cautioning and community justice panels. See Paterson and Clamp (2012) for more on this. Strang *et al.* (2013) similarly excludes these types of practices in their systematic review of restorative justice, as very few of them have undergone rigorous evaluations.

[5] An important caveat is that this process does not replace adversarial fact-finding. Some threshold of responsibility is a prerequisite to all restorative justice. This can mean that an offender pleads guilty or is

Furthermore, one can identify the core elements of the restorative justice mechanism. These core elements are: lay encounters, expressive narratives, and ritual dynamics.

Lay Encounters

A unique element of restorative justice practices is that they empower lay people- victims, offenders, families, friends, and community members- to actively participate in some kind of deliberative forum. In a well-known and enduring critique of contemporary criminal justice, Christie (1977) famously pointed out that criminal law and criminal procedure 'steals' conflict, and the power to deal with conflict, from those most affected by it. A criminal justice system that is dominated by professionalization and bureaucratization is less able to address the direct needs of victims, offenders, and communities (Garland 2001).[6] Restorative justice, on the other hand, is expressly designed to be a bottom-up encounter, where lay people interact with each other to

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found guilty in court, or in diversionary schemes it can mean that they admit responsibility prior to the restorative justice encounter (in New Zealand, the offender must 'decline to deny' the offence in order to be eligible). The starting point of restorative justice is a discussion of what happened, the details of which may or may not be contested, but this is substantively different from an examination/cross examination to determine 'the facts'.

[6] Alternatively, one can interpret this 'theft' as relieving a burden. Victims are a diverse group, and some may not want the responsibility of dealing with the conflict or may be relieved that the state has stepped in.

address the specific impacts of a particular criminal offence or conflict. The main forms that this encounter can take include victim–offender mediation, family group conferencing, restorative justice conferencing, and circle sentencing.

Victim–offender mediation involves an encounter between victim and offender, convened by a neutral third party facilitator. This model has evolved from various approaches mainly conentrated in North America and Europe. Family group conferencing and restorative justice conferencing arose out of practices developed in New Zealand and Australia and involve meetings between victims, offenders, and direct stakeholders such as family, friends, and respected community members. Circle sentencing, generally found in indigenous communities across North America, involves an encounter between a number of different stakeholders, including judges and other criminal justice officials, in a particular conflict (Johnstone 2011).[7]

[7] Note here the distinction between circle sentencing and the broader concept of 'indigenous courts' or 'indigenous justice'. Circle sentencing is a particular justice practice arising from North American indigenous communities that involves community members, victims, and offenders into a deliberative forum about how to address the harm of a particular offence or set of offences. This is outcomes focused, surely, but the unique justice mechanism is the restorative process. The larger concept of indigenous justice may contain elements of restorative justice but is not itself restorative. See Daly and Marchetti (2012) for more on this.

While lay people are at the centre of the restorative justice encounter, professionals always have, and will continue to have, an important role in the process. Restorative justice processes can include roles for facilitators, service providers, social workers, probation officers, and police. Professionals also participate 'outside the circle' with a complex web of criminal justice staff supporting the integration of restorative justice into the courts or other institutions. A burgeoning literature on 'democratic professionalism' suggest that professionals serve a vital role in meeting the needs of lay participants, but that effective collaboration requires a clear delineation of roles and tasks as well as an explicit set of shared goals (Dzur 2008; Rossner and Bruce, 2016).

Narrative/Expressive Elements

The second defining element of a restorative justice mechanism is that it involves the creation and development of a narrative that articulates the voices of lay people. Indeed, restorative justice encounters are carefully designed and managed so that specific types of narratives emerge. Most processes rely on a variation of a 'script' where a facilitator first asks the offender to describe the events leading up to the offence and the details of the offence. Then the victim and other participants speak about how they have been affected by the offence. After a dialogue, the

facilitator will often return to the offender and ask how they have been affected by the offence and by what they have heard.

This structure allows for intertwining narratives of accountability and harm to develop (Rossner *et al*. 2013). A narrative of harm allows the victim and other stakeholders to articulate the impact of an offence in their own words. A narrative of accountability allows the offender to acknowledge the harm that has been caused, accept responsibility, and express remorse. In these narratives, a range of emotions can be expressed, including anger, fear, anxiety, shame, guilt, remorse, and hope. This expressive dimension, expressed through these narratives, is a particularly compelling part of restorative justice (Freiberg 2001; Sherman 2003). Indeed, the emotional element of restorative justice may be its defining characteristic.

The types of narratives found in restorative justice encounters are rather different from the 'hegemonic tales' that dominate courtroom interactions (Ewick and Silbey 1995). While victims may be allowed to speak in court when providing a victim impact statement, this is not the same as a narrative that is co-produced, challenged, and negotiated over the course of an interaction, and reports of these events suggest that they may prove to be unsatisfactory encounters (Rock 2010). Offenders and community members are largely excluded from courtroom narratives.

When they do speak, they are obliged to use words and phrases foreign and unfamiliar to them (Carlen 1974; Ericson and Baranek 1982). In restorative justice everybody speaks, and facilitators are trained to encourage the expression of emotion.

Ritual dynamics

A final distinguishing feature of restorative justice concerns its ritual dynamics. It is widely acknowledged by sociologists and anthropologists that ritual plays an important role in social life (Durkheim 1995; Douglas 1984). As Durkheim pointed out over a century ago, rituals are important because they help one to make sense of a society's collective values, morals, and symbols, and give structure, order, and dignity to otherwise shapeless social events. They also produce 'collective effervescence' or feelings of solidarity with others. In other words, rituals can help to create and sustain belief in a moral order (Collins 2004).

Criminologists have noted that most criminal justice systems have developed increasingly sophisticated 'degradation rituals' to mark the guilt and punishment of an offender (Garfinkel 1956). However, unlike in other social institutions (such as education, the family, the military), criminal justice fails to provide corresponding 'reintegration rituals' that welcome an offender back into a moral community (Maruna

2011; also Llewellyn and Hoebel 1941). Restorative justice scholars have long suggested that it is a unique form of ritual that runs counter to the dynamics of other criminal justice interventions (Braithwaite and Mugford 1994; Zehr 1990).

Theoretical perspectives on why ritual dynamics can account for success in restorative justice will be discussed later in this chapter. For now, it is useful to identify some elements of a restorative justice ritual that make it unique. This includes its staging, choreography, casting, scripting, and symbols. Dramaturgical metaphors abound in restorative justice, and provide a useful way of articulating the ritual elements. First, restorative justice has physical boundaries: participants usually sit in a circle, with no hierarchy and with clear delineations between who is part of the circle and who is an outsider. This sets it apart from an adversarial staging of a court. Second, facilitators make an effort to design a seating arrangement that both supports vulnerable parties and maximizes interaction (Rossner 2013). Third, in many forms of restorative justice, particularly conferencing models, much effort goes into identifying and encouraging a 'community of care' (McCold 2004). Facilitators are tasked with identifying the 'right people', a particularly challenging job in urban anomic environments (Shapland *et al*. 2011). The scripted nature of the practice, discussed in the previous section,

means that most encounters follow roughly similar trajectories. Finally, the process usually results in some kind of agreement. These ‘outcome agreements’, reflect the consensus of the participants and detail steps the offender will take to ‘repair the harm’. They are usually written down and signed by all present.

When restorative justice is viewed as a justice mechanism marked by lay encounters, narratives, and ritual, this can allow for both consistency and variations within the process, to suit the needs and the contexts of particular conflicts and particular people (Shapland 2014). For instance, a restorative justice conference between the offender and victim of serious sexual assault (Miller and Iovanni 2013) or homicide (Walters 2015) may look and feel very different from a conference between a juvenile offender and a local shop owner in a theft case. There will be variation in the process in terms of the amount and type of preparation, the staging, and the way that risk is assessed. But the emphasis on lay people speaking, room for emotional expression, and ritual dynamics remain the same.

Restorative Values, Principles, and Standards

While restorative justice may be defined as a justice mechanism, it is clear that certain values, principles, and standards underpin the process

(Braithwaite 2002b; Johnstone 2011; Roche 2003; Van Ness 2003).[8] Braithwaite supplies a comprehensive framework for identifying different types of standards and principles that ought to permeate a restorative justice practice (2002b), distinguishing between procedural standards and standards that are an outcome or an end state (Strang and Braithwaite 2000). This distinction between procedural and outcome standards is particularly useful when it comes time to evaluate the success of restorative justice.

First, Braithwaite identifies *constraining* standards, such as empowerment, non-domination, and accountability.[9] These standards form the basis of any restorative practice and must be honoured and enforced as 'fundamental procedural safeguards' (Braithwaite 2003: 8). These are procedural standards: their violation becomes immediately apparent during a restorative justice encounter and should not be tolerated.

[8] Although a value, a principle, and a standard are all slightly different concepts, they tend to be used interchangeably in the restorative justice literature.

[9] The full list of constraining standards includes: non domination; empowerment; honouring upper limits on sanctions; respectful listening; equal concern for all stakeholders; accountability; appealability; and respect for fundamental human rights as outlined in international declarations and conventions.

The second category consists of *maximizing* standards, including restoration of relationships, emotional restoration, and the prevention of future injustice, often interpreted as the reduction of offending.[10] These are end-state standards, and they are consistent with what victims and offenders say they want out of such a practice (Strang 2002). While constraining standards must always be honoured, achievement of maximizing standards is conditional on the contexts, desires, and capabilities of the parties. If appropriate they should be encouraged, but not mandated. This list provides useful metrics by which to evaluate the success of restorative justice, working with the hypothesis that restorative justice processes are more likely to achieve these standards than traditional court practices.

The final category consists of *emergent* standards, including remorse, apology, censure of the act, and forgiveness.[11] These principles are no less important than the maximizing standards, but they differ in key conceptual ways. While maximizing standards can be actively encouraged during a restorative justice encounter, emergent standards

[10] The full list of maximizing standards includes: restoration of human dignity; property loss, safety, damaged relationships, communities, the environment, freedom, compassion or caring, peace, a sense of duty as a citizen; emotional restoration; provision of social support to develop human capabilities; and the prevention of future injustice.
[11] The full list of emergent standards includes: remorse over injustice; apology; censure of the act; forgiveness; and mercy.

should only arise organically. For instance, a victim of crime should never be required to express forgiveness just as an offender should never be compelled to show remorse, as this would violate the constraining standards of non-domination and empowerment. Like maximizing standards, emergent standards provide metrics by which one can evaluate restorative justice processes.

Taken together, these restorative justice principles complement a republican theory of justice stressing non-domination and freedom (Braithwaite and Petit 1990). They articulate certain normative principles about how justice ought to be done. Explanatory theories of how restorative justice works in practice gives credence to the normative assertions. In this way, normative and explanatory theories are integrated: we progressively refine restorative justice values as we do more empirical research (Braithwaite 2003). Republicanism sets out a vision for justice, and the growing empirical research base helps to refine the practice to meet that vision, however imperfectly.

Figure 1 demonstrates the relationship between the restorative justice mechanism and restorative justice standards. Constraining standards are at the base of the pyramid and they are what every restorative justice encounter is built upon. The restorative justice mechanism is a specific practice and its key elements are encounters

between lay people, an emphasis on expressive narratives, and ritual dynamics. Outcomes of restorative justice are maximizing and emergent standards, such as restoration, prevention of future injustice, expressions of remorse and forgiveness, and others. A restorative justice mechanism will not guarantee these outcomes but advocates hypothesise that such standards are more likely to be met in a restorative justice process than other criminal justice processes.

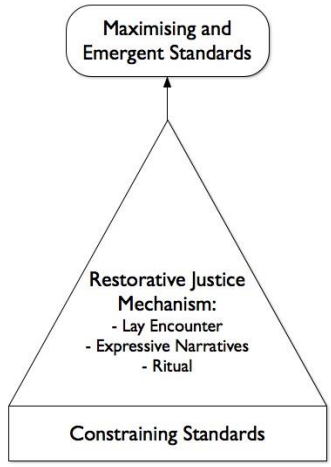

Figure 1. Defining Restorative Justice

Explanatory Theories of How Restorative Jutie Works

A number of criminological theories attempt to account for some of the claims made by restorative justice advocates. The three main approaches include: shame theories, procedural justice theories, and interaction ritual theory.

Shame Theories

As explored earlier, one of the key elements of the restorative justice mechanism is the expression of emotion in narrative form. While a range of emotions are relevant to restorative justice theory, such as guilt, remorse, and empathy (Harris 2003; Harris *et al.* 2004; Van Stokkom 2002), shame is the central emotion around which most theory is built. Braithwaite's reintegrative shaming theory is the most well-known theoretical foundation for restorative justice. Though mention of restorative justice does not appear in Braithwaite's ground-breaking *Crime, Shame, and Reintegration* (1989), practitioners, advocates, and scholars quickly embraced the book's central concepts, such as the now-classic distinction between stigmatic and reintegrative shaming. Braithwaite demonstrates how most criminal justice processes and sanctions shame an offender in a way that is stigmatizing, condemning not just the wrongdoing but the individual herself. Reintegrative

shaming, on the other hand, is a respectful process where disapproval of the criminal act is expressed but offenders are given a chance to express remorse and can then be welcomed back into a moral community. While stigmatic shaming can have long-term negative impacts on an individual, reintegrative shaming will theoretically strengthen social bonds and internally build a conscience that prevents future wrongdoing. This theory has been widely used by academics and practitioners to explain the mechanisms of restorative justice. In later works, Braithwaite connects reintegrative shaming theory to a restorative normative framework, identifying reintegrative shaming as an explanatory dynamic that can explain how remorse, apology, forgiveness, censure, mercy and other values may arise in restorative justice (2002a).

Other scholars shift the focus from the external act of shaming to the internal process of *feeling* ashamed. Scheff and Retzinger (2001) argue that shame is a repressed emotion in contemporary society and can often go unacknowledged. This leads to further shame about feeling ashamed, resulting in a cycle of aggression, anger, dysfunctional patterns of communication, and violence. According to Sheff and Retzinger, these negative consequences can simply be avoided if shame is acknowledged. A restorative justice conference, for example, can

theoretically bring shame to the surface in a way that redirects aggressive emotions. When offenders and victims are both able to acknowledge any shame they might feel, this can lead to some kind of symbolic reparation and reintegration, usually through the expression of remorse and forgiveness (Retzinger and Scheff 1996). In later works, Braithwaite and colleagues incorporate elements of unacknowledged shame into a broader theory of restorative justice, shaming, and shame management, suggesting that in addition to making sure restorative justice encounters are reintegrative and not stigmatizing, one must bring shame to the surface in a positive way (Ahmed *et al.* 2001; Harris and Maruna 2006).

Procedural Justice Theory

Reintegrative shaming theory implies that shame needs to be coupled with respectful treatment. This is the heart of procedural justice theory, which asserts that if citizens feel that their treatment at the hands of authority figures is fair, inclusive, and respectful, they are more likely to obey the law (Tyler 1990; Tyler and Huo 2002).

Defiance theory incorporates elements of reintegrative shaming, unacknowledged shame, and procedural justice to argue that similar criminal sanctions have different effects for offenders in different social situations (Sherman 1993). Defiance occurs when an offender views a

sanction as illegitimate, has weak bonds to the sanctioning agent, or denies his or her shame in the offence. Deterrence, on the other hand, can result if the sanctions are regarded as legitimate, offenders express shame for their actions, and they have strong bonds with mainstream society.

The voluntary nature, deliberative structure, and encouragement of stakeholder participation can lead to increased perceptions of fairness, legitimacy, and social bonding. If restorative justice is perceived to be fairer than going to court, then it theoretically follows that restorative justice will encourage compliance with the law, thus preventing future injustices.

Interaction Ritual Theory

Procedural justice and shame theories make claims about how the process of restorative justice will lead to desired outcomes. However they don't specify precisely how feeling shame, fairness, or trust brings about such outcomes. A final theoretical perspective focuses on the micro-level elements of producing a successful ritual. Interaction ritual theory draw on a long tradition in sociology and anthropology arguing that one's sense of morals, community bonds, and the self are a function of the rituals in which one partakes, both sacred and profane (Collins 2004; Durkheim 1912).

The restorative justice ritual brings together victims and offenders, their emotions, and their stories to produce solidarity and other conciliatory emotions (Rossner 2013). In particular, ritual theory posits that by bringing people together in a face-to-face encounter with clear barriers to outsiders and a shared focus of attention, a certain rhythm will build up between participants as they become more in sync with each other's emotions and perspectives. This rhythm will lead to people feeling connected to each other, in a kind of Durkheimian 'collective effervescence' (Collins 2004). Solidarity and shared emotion may then be demonstrated through expressions of apology and forgiveness, and symbolic integration through handshakes, eye contact, and hugs (Rossner 2011). This is a particularly striking type of ritual when one considers the asymmetrical degradation rituals of court (Carlen 1976; Rock 1993). In theory, the micro-level production of solidarity and shared emotion provides restorative justice with the unique power to achieve its standards and goals.

While these theories can help explain why restorative justice might achieve successful outcomes, they can also account for its failures. A worry is that restorative justice can become another form of degradation ritual, marked by stigmatic shaming, unfair processes, and coercion (Braithwaite and Mugford 1994). As theoretical, empirical, and

normative accounts of restorative justice develop, an examination of both what works and what does not can help to clarify theory, improve standards, and enhance practice.

Empirical

Restorative justice has been subject to an enormous amount of empirical research, perhaps more than any other criminal justice innovation in recent history (Strang and Sherman 2015). Much of the research examines restorative justice as a diversion or a supplement to court and focuses on outcomes such as restoration, fairness, legitimacy, and future offending, largely mapping onto the maximizing and emergent principles articulated by Braithwaite. Whereas early research tended not to include a control group or to utilize matched controls, a growing body of research now draws on randomized controlled trials (Sherman *et al*. 2015b). Responding to calls for more in-depth analysis of the process and dynamics of restorative justice (Braithwaite 2002a), there is also a sizable qualitative literature drawing on observations and interviews that looks more closely at the actual practices of restorative justice. This research includes a focus on facilitation and staging (Bruce 2013; Bolitho 2015), power (Cook 2006), emotions (Rossner 2011), language (Hayes and Snow 2013), and others. A small number of studies have

examined how the dynamics of conferences influence outcomes (Hayes and Daly 2003; Hipple *et al.* 2014, 2015; Rossner 2013).

Participant Experiences with Restorative Justice

Braithwaite's constraining standards include respect, accountability, empowerment, and non domination. His maximizing and emergent standards include concepts such as restoration, apology, and forgiveness. Extant research suggests that all of these are experienced, on average, in greater quantities by participants in restorative justice conferences compared to those whose cases end up in traditional courts.

Research from the US, Britain, Australia, New Zealand, and Canada suggests that both offenders and victims perceive restorative justice as fairer, more satisfying, and more legitimate than that which is offered in the courtroom. Offenders who participate in restorative justice have a better understanding of what is happening, are more actively involved in their case, and are more likely to report that they are treated with respect and fairness (Barnes *et al*. 2015; Morris and Maxwell 1998; Tyler *et al.* 2007; Umbreit *et al.* 1994). Restorative justice conferences can also result in a higher frequency—and larger amounts—of restitution paid to victims (Strang 2002; Umbreit *et al.* 2004).

In a comprehensive study of restorative justice for British offenders, Shapland and colleagues (2007) reported that the large majority of victims and offenders found their conferences to be useful, felt a sense of closure, and were more satisfied with their procedures than those who went to court. Notably, those whose offences were most serious were significantly more likely to find their conference useful compared to those who committed less serious offences.

Research from Australia examining the role of shame in restorative justice reports that offenders who participate in restorative justice conferences experience both reintegrative and stigmatic shame in higher quantities than offenders who go to court (Ahmed *et al*. 2001). This suggests that while restorative justice can maximize positive emotions, it can also provide a space for more harmful processes. All emotions, both positive and negative, have the potential to be amped up in such intensive encounters.

Healing victims

There is clear evidence that restorative justice is beneficial to victims of crime. Symbolic reparation, generally in the form of an apology, is often important to victims' satisfaction levels. Victims who meet their offender and receive an apology are more forgiving, feel more sympathetic towards the offender, and are less likely to desire physical

revenge (Sherman and Strang 2011). Similarly, Poulson's (2003) review of restorative justice evaluations illustrates a range of positive psychological outcomes for victims.

Randomized trials in Great Britain which built on Strang's (2002) work provide strong evidence of increased well-being for victims who meet with their offender (Shapland *et al.* 2007; Strang *et al.* 2006). This is confirmed by Angel *et al*. (2014) who analyse Post Traumatic Stress (PTS) symptoms in victims of crime randomly assigned to a restorative justice conference or a control and find significantly reduced levels of PTS symptoms immediately following a conference. The authors also report that women suffer more post-traumatic stress symptoms after a crime, but also benefit more from restorative justice than men.

A minority of victims and offenders feel worse after a conference, specifically when they reported not being involved or disrespected when reaching an outcome (Morris and Maxwell 1993; Strang 2002). Similarly, Shapland *et al*. (2007) found that the minority of participants that were unhappy with their conference pointed to instances where they felt they were not being taken seriously, or that they felt uninformed or not included in a follow-up after the conference. Finally, Choi *et al*. (2012) point out that when victims are unhappy with

their experience of restorative justice it is often when they feel little attention has been paid to the process and most of the focus is on developing suitable outcomes for the offender. Although such cases are greatly outnumbered by those with positive outcomes, they do highlight the links between the conference dynamics and subsequent satisfaction. Victims and offenders do not always feel that they can tell their story, develop rapport, or acheive solidarity. When elements of the process go wrong, participants can leave the interaction leaving worse.

Reducing reoffending

The best research on restorative justice and reoffending shows a modest but consistent positive effect on recidivism reduction. Due to the many challenges of adequate implementation and evaluation, much research on restorative justice and recidivism has been hindered by the lack of an adequate comparison group, little statistical power, or other methodological issues (Weatherburn and Macadam 2013). The most rigorous evaluations of restorative justice employ either a randomized or matched control group for comparison and suggests that restorative justice can reduce future injustices by both reducing reoffending and saving money.

A thorough review of the early evidence on restorative justice appeared in Braithwaite (2002a), with cautiously optimistic conclusions

about its effectiveness. Since then, a number of meta-analyses and systematic reviews have attempted to address some of the methodological limitations of previous research by pooling data to look at trends in results (Bonta *et al.* 2006; Bradshaw and Roseborough 2005; Bradshaw *et al.* 2006; Latimer *et al.* 2005). Though the impact of restorative justice on recidivism varies by degree, all studies conclude that restorative justice, compared to court, results in a modest reduction in offending. There is also evidence of secondary deterrence in a reduced desire for revenge by victims, thus potentially preventing future retaliatory crimes (Strang 2002). Most recently, Strang *et al*. (2013) report on a systematic review of the most rigorous randomized controlled trials of restorative justice. Across 10 experiments, they found an overall positive impact on the frequency recidivism. Furthermore, the analysis shows some support for the argument that restorative justice is more effective for violent crime than it is for property crime, and for adult offenders over young offenders. While the effect sizes of these analyses are not large, they are contrary to conventional wisdom and standard practice, which frames restorative justice as most suitable for low-level, juvenile property crimes (Sherman *et al*, 2015a, see also Wood and Suzuki 2016). This finding is supported by Rossner (2013) who finds that individuals with more, and

more serious, previous convictions are more likely to benefit from restorative justice conferences than first time offenders.

There is also strong evidence to suggest that restorative justice conferencing is a cost-effective approach to reducing crime. Shapland and colleagues (2008) utilize innovative measures to examine the cost of crime and the impact of restorative justice, finding significant savings (in terms both of criminal justice processing costs and of the costs of reconvictions) for every £1 spent on delivering restorative justice conferences.

Like most criminal justice innovations, restorative justice suffers from a 'heterogeneity problem' (Braithwaite 2014), as not all restorative justice processes can be guaranteed to meet the high bar of maximizing and emergent standards. Indeed, a major flaw in much of the thinking around restorative justice is that it 'holds out the promise that these things *should happen most of the time* when research suggests that these things can occur *some of the time*' (Daly 2003: 234). As such, it is useful to compare not only restorative justice to court, but to examine variations within restorative justice conferences. An analysis of within-conference variations shows that offending is less likely when offenders were remorseful and the outcome agreement was decided by general consensus (Hayes and Daly 2003). Similarly, Shapland and colleagues

(2008) report that decreases in offending are most likely when offenders reported that the conference helped them realize the harm done, that they found it was useful, that they wanted to meet the victim, and when they were observed to be actively participating in the conference. Hipple *et al.* (2014, 2015) report similar results: conferences that observers reported to be 'restorative' resulted in less offending, both in the short and long term. Rossner (2013) analyses the ritual dynamics of restorative justice conferences, comparing the reoffending frequencies for offenders who participated in emotionally intense and high solidarity conferences with offenders who participated in less intense conferences, finding that offenders in the former category offended at a much lower frequency, even five years after their conference (see also Sherman *et al.* 2015b).

To conclude, the research on restorative justice conferencing and reoffending suggests that it is right to be optimistic about this process. However, there are important caveats to be made. First, restorative justice seems to be most effective when it meets constraining, maximizing, and emergent standards. Not all conferences achieve restoration, reparation, or reductions in offending and we should not expect them to. Second, these principles are most likely to be met in cases with more serious crime, with adult offenders, and where the

emotional intensity is high. Such conferences are harder to organize, more time consuming, more politically risky, and more expensive, but may be the most effective.[12] Third, the evidence base is largely limited to tests of the conferencing model, including face-to-face meetings between victims, offenders, and other stakeholders (Sherman *et al.* 2015a). One should be cautious about generalizing these findings to less intensive interventions. For instance, a common practice for police in the UK is to deliver a 'street level restorative justice', where a person might be cautioned in a restorative matter by a police officer on the spot after being apprehended. The offender might be asked to think about harm and making amends, but victims and other stakeholders are not usually involved (Hoyle *et al.* 2002; Paterson and Clamp 2012). While practices such as restorative cautioning might meet the standards and values set out by Braithwaite (2002b), their effects have not been rigorously measured. There is a danger that research about restorative conferencing is being used as an evidence base for related but fundamentally different models operating under the same 'restorative' banner.

[12] Maxwell and Morris (2001) have similarly argued that since high quality restorative justice is so resource-intensive, practices should focus on persistent serious offenders.

Restorative Justice as Punishment

Beyond the many empirical questions about the effects of restorative justice, there are also a great many normative debates about the value of restorative practices for society. One current debate of relevance to criminologists and criminal law scholars centres on whether restorative justice can meet the punitive aims of criminal justice. This is particularly important in the current political context, where restorative justice is positioned as a mainstream option for offenders and victims.

Early advocates of restorative practices, often connected to prison abolition movements, argued that restorative justice was a new paradigm of justice that could entirely replace contemporary adversarial and retributivist criminal justice practices (Zehr 1990). Restorative justice was asserted to be the opposite of 'punitive justice' or 'retributive justice'. Such radical claims helped to articulate restorative values, distinguish it from 'business as usual', and publicize the concept. But there was significant disagreement about this, including critiques from criminal justice practitioners who sought to incorporate restorative justice into their existing practice and from criminal law theorists who challenged the retributive–restorative dichotomy (Daly 2002; Duff 2003; Zedner 1994). Indeed, Daly (2012) has suggested that 'the retributive-restorative oppositional contrast stalled a more

sophisticated conceptual development of restorative justice in its formative years' (2012: 358). Rather than simply dismiss punishment as an illegitimate goal of criminal justice, punishment needs to be taken seriously, both as a theoretical construct and a social institution (see Garland 1990).

Instead of an alternative to punishment, restorative justice can be seen as an 'alternative punishment' (Duff 1992). One reason for this that it places certain obligations, and some pains, upon offenders (Daly 2002). However, Walgrave (2008) has argued that such pain cannot be punitive, as it is not inflicted to meet retributive goals. Retributive punishment is the intentional infliction of pain, whereas in a restorative justice context pain is merely a byproduct, such as the pain resulting from feelings of remorse. Duff (2003), critiques restorative justice scholars for their myopic focus on the harm of crime, arguing that in order to meet the standard of criminal responsibility, an offence must also be seen as morally wrong. While harm can be repaired through symbolic or material reparation, in Duff's view a wrong must be addressed retributively, through acts of censure. Restorative justice may be an ideal outlet for such censure, and can therefore satisfy retributive aims. Similarly, London (2011) argues that restorative justice should have a retributive element in order to promote trust and legitimacy. This

view is also reflected in social psychological experiments, where participants preferred restorative processes that contained retributive elements, particularly for serious crime (Gromet and Darley 2006).

Whether or not the infliction of pain is intentional, and therefore punitive, many offenders report the experience of restorative justice as painful. Indeed, many say that apologizing to one's victims is harder than going to court. Its proponents often emphasize that it is not a 'soft option' and is therefore a legitimate element of criminal justice (Johnstone 2011). There is also a growing jurisprudence of restorative justice, with courts in Canada and New Zealand concluding that restorative justice can meet retributivist aims through denunciation and censure (Foley 2014).

Other areas of debate include whether restorative justice should be a diversion or supplement to prosecution (Gavrielides 2008), where it belongs in the criminal justice system (Shapland *et al.* 2011), its use for prisoners serving long sentences for serious crime (Bolitho 2015; Miller 2011), its use in cases of sexual violence and family violence (Daly and Stubbs 2006; Ptacek 2009), and its relationship to indigenous justice (Daly 2002). While each of these areas merits a longer discussion, the constraints of this chapter prevent this.

The Future of Restorative Justice

Restorative justice has been a part of criminal justice in England and Wales for a number of years, with provisions set out for youth justice, probation, and prisons (Crawford and Newburn 2003; Hoyle 2012). In recent years, it seems that restorative justice may be having another revival. There has been a flurry of statements, action plans, and legislation indicating that the 2010 Coalition government, and likely the 2015 Conservative government, supports the integration of restorative justice in all stages of the criminal justice system (Collins 2015). A restorative justice action plan was published by the Ministry of Justice in 2012 and again in 2014 asserting the government's commitment to the practice. Other notable milestones include the 2013 Code of Practice for Victims, stating that all victims of young offenders have a right to restorative justice, and victims of adult offenders have the right to learn about restorative justice and assess its appropriateness. These were not empty promises either; they were paired with a commitment to invest £29 million, channelled through local Police and Crime Commissioners, into the provision of restorative justice at the local level. At the same time, the Crime and Courts Act 2013 provides statutory support for restorative justice at the pre-sentence stage, allowing courts to defer sentence to allow restorative justice to take place. There is also recent

investment in Neighborhood Justice Panels to tackle low-level crime, a new Rehabilitation Activity Requirement introduced in community and suspended sentences with restorative justice as an option, and a pathfinder programme investigating the use of restorative justice at the pre-sentence stage in select crown courts. While this ambitious set of strategies is promising, its current implementation has been more piecemeal (Wright 2015). In an effort to bring some structure to a disparate set of practices and policies, the Restorative Justice Council, an independent third sector membership body advocating for restorative practice, has developed its own statement of principles and a Restorative Service Quality Mark which restorative justice programmes nationwide can seek to obtain.

Elsewhere around the world restorative justice has continued to benefit from continued investment. The jurisdictions with the most coordinated and successful efforts are New Zealand and Northern Ireland. New Zealand has completely transformed its juvenile justice system over 25 years to one where every effort is made to divert cases out of the courts into restorative justice conferencing, regardless of the seriousness of the offence or the history of the offender. There is less support however for restorative justice in adult cases. One reason for this is the different way restorative justice is incorporated into

legislation. The 1989 Children, Young Persons, and Their Families Act effectively mandates restorative justice as a first option of all young offenders. In the case of adults, support for restorative justice appears in three different acts (the Sentencing Act 2002, Parole Act 2002, and the Victims' Rights Act 2002), but only encourages its use in vague terms. The story is similar in Northern Ireland. Originating out of community restorative justice schemes developed to deal with paramilitary violence, the Justice (Northern Ireland) Act 2002 legislated restorative justice conferences for all young offenders, either as a diversion or as part of a court order. There is no legislative basis for adult restorative justice in Northern Ireland, but there are a growing number of schemes run through probation and victims' services.

There are three observations to be made about this recent upswing. First, the current mood is one in a long cycle that sees the popularity of, and the resources for, restorative justice ebb and flow in many jurisdictions. Restorative justice has been on the verge of 'taking off' since at least the 1980s and needs sustained support in order for this to be achieved.

Second, as restorative justice practices expand, attention should be paid to the empirical base, which suggests that restorative justice conferences are more effective when they are emotionally intense

encounters, with victims and stakeholders present, and for more serious crimes with adult offenders. The best research to date has focused on the conferencing model, and caution should be advised when generalizing from this model to different restorative practices. Marshall warned of this, with much foresight, when he concluded:

> It is its ability to absorb many different concerns that gives it appeal, and it is its grounding in successful practice that gives it persuasive justification. In this lies its strength and weakness. There is a grave danger that Restorative Justice may end up being all things to all men and women, concealing important divergences of practice and aim. (1999: 30).

Third, research into restorative justice has shown that it can be a success, but significant hurdles first need to be overcome. These include: maintaining referrals and case flow, ensuring cooperation between services (especially when it comes to data sharing), and upholding standards for training and practice to ensure high quality and consistent service. At the same time, a strength of restorative justice is its neutrality—too much integration within criminal justice can undermine this, as well as leading to net-widening, abuse, and unaccountability. Many of these issues have been addressed by providing a statutory basis for restorative justice. The experiences of Northern Ireland and New Zealand, where restorative justice has been formally incorporated into the youth justice system, are particularly

illustrative in this regard (for a more thorough discussion, see Shapland *et al*. 2008, 2011). Without a legislative basis the implementation and development of restorative justice relies on the leadership of local judges, legal professionals, and community activists. This is not enough to sustain its growth. In both New Zealand and Ireland, restorative justice has experienced significant support and success when it has a statutory basis. When it does not, as is the case for adults in both countries, its implementation is less impressive. In the face of growing evidence that restorative justice is most effective for adults and serious crime, its future as a mainstream component of the criminal justice system depends on statutory support.

Selected Readings

The best readings that provide comprehensive analysis of theory, research, and debates in restorative justice include Braithwaite's *Restorative Justice and Responsive Regulation* (2002a); Johnstone's *Restorative Justice: Ideas, Values, and Debates* (2011); Cunneen and Hoyle's, *Debating Restorative Justice* (2010); Von Hirsh *et al.*'s *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms* (2003); Johnstone and Van Ness' *Handbook of Restorative Justice* (2007); Dignan's *Understanding Victims and Restorative Justice* (2005); and the 2002 special issue on restorative justice in the *British Journal of Criminology*. Readings that include original empirical research on restorative justice can be found in Strang's *Repair or Revenge: Victims and Restorative Justice* (2002); Shapland *et al*.'s' *Restorative Justice in Practice* (2011); Rossner's, *Just Emotions: Rituals of Restorative Justice* (2013); Ahmed *et al*'s, *Shame Management Through Reintegration* (2001), Roche's, *Accountability in*

Restorative Justice (2003); and Miller's, *After the Crime*: *The Power of Restorative Justice Dialogues Between Victims and Violent Offenders* (2011).

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