# Issues in Restorative Justice

## Introduction

Restorative justice is an approach employed in the justice system allowing both the victim and the delinquent to mediate a restitution pact which can satisfy both parties. The method is employed in a bid to enable the criminal to avoid offenses in the future (International Institute for Restorative Practices, 2017). Therefore, since the approach includes both the victim and offender, it is considered as an offense against an individual victim their immediate community and not the State (J.D., 2001). In this theory of justice, the law professionals play a secondary role in ensuring the process runs smoothly which is a shift in responsibilities. The process is therefore different from the traditional methods of criminal justice. Despite restorative justice dating back thousands of years back the approach only gained significant traction in the justice system in the late 1990s. Since then it has and continues to increase in popularity, attracting many segments of the society such as the police, victims, judges and the justice system of juveniles. As a growing social movement, restorative justice seeks to address the harm brought about by criminal offenses.

However, another the traditional theory of justice remains more popular than restorative justice because in it lies the foundation of the current criminal justice system present in most if not all nations today. This enduring kind of legal method is the retributive justice that unlike restoration seeks to punish the offender as evenhandedness to the offended rather than address the harm, repair the damage and mend the relationship. Retribution maintains that offenders ought to receive a punishment whose severity fits that of the crime committed, not only for the sake of satisfying the victim but to serve as an example to themselves in future or as a warning to potential offenders that stringent measures exist for such actions. It reassures the rest of the community that the threat of those who partake in these ills in society is made neutral and that they who do these things must face the consequences by having some of their privileges taken away by the custodians of the rule of law. It goes beyond the victim to a point where the state acts on behalf of the victim and the rest of the social order. The reason why this type of justice is significant in the discussion is because of how it compares with restorative justice. This matter is crucial in exploring and illuminating how current criminal justice systems would apply both theories of justice in crimes varying in severity or magnitude among other variables like age. It also helps in identifying what works and the success rate of either method.

## Principles and Processes of Restorative Justice

Several processes constitute the restorative justice approach. Some of the methods include mediation between the victim and offender, restorative conferencing, family-group conferencing and peacemaking circles among others. During the dialogue process between the victim and offender, a trained mediator has to oversee the meeting between the two parties. The process involves few individuals from both sides in a safe setting. In such a meeting, the victim usually informs the offender about the impact of his/her crime with the aim of developing a restitution plan. The process is not similar to the traditional form of remediation which is common in settling civil issues. The primary goal of the process usually involves the healing process of the victim and also allowing the offender to understand the immensity of the crime they committed. In overall, both parties can, therefore, provide a mutually agreeable decision on the case (Zehr, 2015).

A restorative conference process can also be applied. The restorative process is a dialogue between both the offender and victim and their family members and friends. In this meeting, the parties sit together and decide on the resolution of the problem. The victim's side confronts the offender through questions and portray their feelings and finally present their say in the outcome of the case. The offenders are usually held accountable for their actions and most of the times try to make amends and accept the restitution package. In these conferences, a facilitator is present to supplement the process, but they are not active participants in the process. When both parties reach an agreement, they draft and sign a simple contract. The restorative conference approach is similar to the family group conference. However, the family group conference method is more suitable for young offenders.

Another method related to restorative justice is the peacemaking circles. A circle is regarded as a versatile practice in the restorative justice approach because it develops the community's relationship and enables the community to respond to conflicts reactively. The circles allow individuals involved to tell their stories and their perspective regarding the outcome of the case. This method has a wide variety of purposes including decision making, healing, resolving the conflict and developing a relationship. The circles are usually structured and overseen by the facilitator or a circle keeper. Some of these systems mentioned above may require both parties to sign a confidentiality agreement. For instance, the victim-offender mediation process and the family group conferencing have this requirement so it remains confidential and no one save the participants is privy to what transpires (National Institute of Justice, 2007).

It is certain that restorative justice is an inclusive justice system approach. However, there are specific issues with state statutes in extending the approach to grave offenses. As stated above, the various models of restorative justice are flexible and dependent on the involved parties. Regardless of the model employed the objective is usually the same. Nowadays, the restorative justice approach is only used for low-risk offenders who are mostly juveniles. There are very few programs which involve offenders who have committed serious crimes and adult offenders. The justice system views the approach of restorative justice for dangerous criminals as a problematic venture since it interferes with state statutes. Critics argue that on the one hand, the procedure might be advantageous when applied to cases involving serious crimes while others say that such should not be in practice when it comes to weighty matters in violation.

Restorative justice which is now increasingly being used in the justice system is attributed to positive outcomes all over the world. There are various claims that if the justice system adopts restorative justice for the serious crime, countries will be able to save millions of dollars by reducing crime. For example, in the United Kingdom, the Restorative Justice Council claims that the government can save more than 185 million Euros in just two years if the approach was used for victims of serious crimes. The Council also purports that restorative justice significantly empowers the victims of a crime after they face the offender. Research from the Ministry of Justice reported a 27% reduction in the reoffending rate of individuals after the restorative approach was used. This reduction would then lead to cashable savings as stated above.

For these reasons, some arguments support this type of justice claiming that there are possibilities that the criminal justice system could extend the model to all remediate all types of offenses including serious crimes. On the other hand, parties opposing restorative justice see the challenge in implementing it in serious crimes with points of view that highlight the challenges and drawbacks of its implementation. We shall review both sides of the divide to enable us to come up with conclusive solutions on how, if it is possible, to put into effect restorative justice across various types of crimes ranging in their gravity.

## Arguments for the Wide Adoption of Restorative Justice in Criminal Justice System

From the introduction, we gather that restorative justice seeks to repair the harm and the broken relationship between the offender and the victim as a form of justice. Such is as opposed what retributive justice does which is to punish the criminal for the sake of the victim and the rest of society, without necessarily having the issue worked out. So retributive justice comes across as adversarial. Its solutions for crime conform to one of the oldest forms of justice from ancient civilizations like Mesopotamia. As stated by Hammurabi code, the theory of justice believes that an eye for an eye is the basis for fairness and thereby it deals a measure of the punishment deemed appropriate for the crime done without much room for negotiation. While an eye for an eye may not exactly translate into how the system currently works, the relevance of this basis is seen in how our most of laws deal with criminal offenders (ushistory.org, 2017). Most systems believe that offenders should suffer an equivalent of the harm they bring about and that this suffering brings both reformation and justice.

One thing that restorative justice does that is different from what most current legal systems are used to is empower the victim. Typically, for most criminal justice systems, the victim only lodges a complaint and gives testimony in proof of the crime committed against them. Most of the time even the proving is not their work because the state may step in and advocates are actively involved. However, the victim is a crucial part of the restorative process, in fact, it more or less revolves around them and the advocate, as explained above, is only ancillary. Sufferers can voice their issues and engage the offending party and describe how the crime impacted them and voice other relevant issues during the conference in the presence of the facilitator, or the reconciliatory party.

Such an opportunity is a double-edged sword. However, we shall first focus on the advantages. When a victim receives such empowerment to voice these issues, it significantly helps them heal and get closure. 85% of the victims, according to research, find this type of justice beneficial in one way or the other, especially if it happens in during one-on-one meetings (Restorative Justice Council, 2015). These engagements may also decrease or ease the traumatic impact of the crime as seen by a decrease in post-traumatic stress and similar symptoms. It thus reduces the cost of dealing with such issues as having to go to therapy because it is therapy in itself. Once a human face is put on an offender then matters are easier to deal with for the victim. Moreover, it is possible for some that the urge of vengeance is quenched through this method (Sherman & Strang, 2007).

With such advantages for the victim, the proponents maintain that the system can find ways to remediate crimes across the board and not just for juvenile offenders or minor felonies. An interesting statistic from research shows the occurrence of more than 90% of satisfaction in victims of violent crime when the resolution is by restorative justice (Sherman & Strang, 2007). Another advantage of victim empowerment that would aid this cause is that they are allowed to be in control of how the process takes place. First of all, the process is not forced on anyone; it takes deliberate effort by the victim and is only out of their own free will. Everything, for the entire duration of the reconciliation process, is made comfortable for them and one can withdraw at any time if they so wish. It is up to the facilitators to offer support and guidelines, but ultimately, the choices are the victim's to make. The facilitators also ought to assure them of their safety. They ought to have the necessary skills to remediate the process and any matter that arises therein. The victim must be comfortable with the where the meeting is to take place, and the venue must be a neutral, safe place. It is not a requirement that these conferences happen one-on-one. Although that might be the best method, if the offended party is not ready to face their offender, other channels of communication are applicable. Anyone a victim would like to attend for purposes of support, like a friend or family should be allowed to accompany them (Restorative Justice Council, 2015).

Besides helping the victim, the restorative type of justice also benefits both the offender and the criminal justice system. According to Sherman and Heather’s work, the method cuts down on repeat offending especially if the meetings occur face to face (Sherman & Strang, 2007). The opportunity afforded to understand the victim and own up to one's actions seemingly helps in remorsefulness and reformation. As this is an advantage to the perpetrator of the crime, it is also beneficial to the criminal justice system because if the results are made sustainable, it could help the issue of overcrowded prisons. These studies further show that restorative justice is more efficient compared to imprisonment. Adult offenders who undergo the process are more likely to avoid a repeat of their wrongs as compared to those who go to prison (Sherman & Strang, 2007). For young offenders, the two processes seem to have a more or less similar result. One can deduce from these studies that not only is restorative justice appropriate for delinquent youth, but it is equally as practical, if not more, to the adults.

Looking at it from a financial point of view, an alternative method to deal with crime, less crowded prisons, the possible avoidance of the lengthy criminal justice process that involves courts and other institutions is a potential way to cut costs and save time. The fact that the offenders pay for these conferences and reconciliatory processes is an added economic advantage. The community and the government can put the extra money to good use. The fact that the community collaborates with law enforcement and institutions and is involved in providing resolution for crime and conflict is another valuable aspect of this type of justice (Gabbay, 2005).

Arguments against the Wide Adoption of Restorative Justice in Criminal Justice System

While all the above seems like a practical and brilliant solution to some of the problems in the justice system today, there is some limitation to restorative justice. For starters, this method requires consent or a willingness of participation from both the offender and the offended for it to work. Without that, there is no way it can work. It is currently not an available option for all offenses. Some offenders refuse to accept responsibility, and some victims feel that, for one reason or the other, it is inappropriate, insufficient or they simply cannot engage in the dialogue. It is unlike retributive justice where the state will come in and prosecute on behalf of a victim. It will also punish an offender, remorseful or not, with the intention to "forcefully" or hopefully reform them by having them bear the brunt of their mistakes. It does so for the sake of victim justice, to protect the rest of the society from the threat the offender poses and as a deterrent to potential or repeat offending.

There are some reasons why some grave crimes victims would have nothing to do with restorative justice, let alone refuse to participate in dialogue (Gaudreault, 2009). Despite a reassurance of safety and the promise of possible healing, communicating with an offender may cause stress, dread, anxiety, feelings of vulnerability and helplessness and cause them to re-live those trying moments. In sensitive cases like sexual violence, as painful as it is to talk about it with a loved one or a professional, it may be all the more difficult and traumatic to address the one who caused it and speak of its impact. That is also a gross breach of confidentiality that is not at all therapeutic and may do more psychological harm than good and may end up victimizing the victim again (Liebmann, 2016). Most sexual abuse perpetrators also do not readily admit wrong-doing (Neave, 2004).

The application of restorative justice is especially unpopular in particular cases and offenses that are considered serious and controversial. Critics argue that this form of justice is lenient on the offender and moreover that it might be ineffective. Crimes of great extremes of horror like murder, sexual assault, terrorism and crimes against humanity and such, some believe cannot resolve through just having dialogue. If individuals committing these crimes go through the restorative justice, many feel that the punishment is not proportional to the gravity of the act. Due process rights and the standardization that retributive justice offers is a significant function of the justice process, and such standards are unavailable in restorative practices (Hudson, 2002). And as far as reducing repeat offending goes, the restorative system is only a short-term solution. Its leniency and temporary empathy, in the long run, they argue, will not cause permanent reformation compared to what a harsh but proportionate form of punishment would do. Therefore it does not solve the problem of recidivism, instead, in many cases, it postpones it for a while.

In essence, the criminal is supposed to pay for the crimes they commit and one of the key principles of proper justice is reformation. However, a situation where an offender is victimized or shamed in public does not help matters, especially reformation and reconciliation which are two cornerstones of restorative justice. When dialogue turns into an attack against the offender, this type of justice misses the point, and that is a limitation those practicing it have to deal with during these conferences and mediation talks.

## Conclusion

It is no doubt that the restorative theory has its place in the justice system and it is no wonder that quite more are embracing it. Victims should have the chance to participate and receive the closure, peace of mind and restitution they need. They need an outlet to share their pain and heal, to see the offender accountable and remorseful and perhaps understand why they acted in the way that they did. If forgiveness is possible and the willingness to help them change available, these are excellent and ideal ways to deal with wrongdoing. The involvement of the community and the faith restorative justice builds in the system is also of profound significance. Restorative justice is, therefore, an excellent idea, but there are pertinent challenges in its implementation. Its principles to resolve harm, mend relationships, fix offenders and heal victims may be practical in some cases but are somewhat idealistic in others.

However, questions on the sustainability, proportionality, and effectiveness of restorative justice especially in horrific, anti-social wrongs still arise, and until the issue of standardization and the assurance of fairness is addressed, there is going to be opposition. On the other side, we have incarceration and similar harsh punitive models ridden with their issues. The victim is alienated and has very little say in any matter. The isolation of wrongdoers from society sometimes also does not do much good especially in reforming them and reintegrating them back into the social order. The system, therefore, needs a way in which to balance both sides of the scale.

A term that is closely related to restorative justice is transformative justice, and I believe this theory if adequately studied and developed might be the solution. Just like restorative methods, it looks at crime from a community point of view and uses dialogue and mediation as ways and means of conflict resolution. It is also against harsh punitive methods like incarceration that separate individuals from the rest of the society. However, unlike restorative justice that fixes the problem after a conflict ensues between two parties, this form believes in dealing with the causes of crime founded in social injustice (Nocella, 2011). A matter of interest would be whether transformative justice can solve the issues in restorative justice and bring together the best of both worlds (restorative and retributive) in balanced harmony. Working out this harmony and working on transformative justice should now be the primary issue in criminal justice.

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