

Chapter 16

Epilogue: Reconstructing Restorative Justice Philosophy

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A Summary of Discourses

Blackburn (1999, p. 5) said, ‘Our ideas and concepts can be compared with the lenses through which we see the world. In philosophy the lens is itself the topic of study.’ Our authors treated philosophy as a way of life; elements and structures through which to view the world, the implementation of values in justice systems, and the imagination of a restorative world were some of the issues examined in their chapters.

The discourses in this volume reflect the structures with which justice systems are built. The journey from practice to theory and back and the continuity of practice are also key points in the structure of the chapters; they were not merely an attempt to theorize practice or practice theory. It was a dialectic relationship between practice and theory, which facilitated a broad focus on worldwide social structures and justice systems. The discourse of the chapters lies in the lens through which we view social structures, justice systems, human rights institutions, communities and individuals.

So, this is a discourse on the chapters’ discourses, like the final varnishing of the painting. Some colours in the painting are bold, some are pale, but each viewer has his or her own perception. However, we can distinguish a few of the painting’s components and formulate a varnish which complements the whole.

The first part of this final chapter serves as a gathering, highlighting and organization of the themes and issues which have arisen in the preceding chapters. We appreciate that each reader will have their own perspective on what they have read and we do not attempt to analyze critically the key discourses which have arisen from the chapters. This will be done in the second part. The main issues addressed in the volume, were:

1. Restorative justice philosophy is neither a solid perspective nor a global theory. Restorative justice philosophy helps how and what to think, how and what to say, how to act. With a glance at the past, we live the present, looking to the future. In other words ‘fixing the past, into the focus of the present and to some extent with the future’ (Mackay, Chapter 6).

According to Mackay, restorative justice aims to restore and repair the harm done to individuals and/or communities. Individual personalities, institutions, groups, identities, values and principles, ideologies, representations and feelings are all involved in the transformative and interactive process of restoring and healing the harm.

It is clear that most of our authors (particularly Johnstone, Oudshoorn and Schoeman) have intended to widen the restorative justice lens to other matters, including guidance on how we should live our everyday lives, giving justifications and teachings of restorative justice. Restorative justice becomes an archetype of thinking and living. In other words, focusing only on restorative justice practices (such as mediation, conferences, cycles) is like seeing the trees but failing to see the wood.

2. Restorative justice philosophy has both transformative and relational effects at all levels of social reality (individuals, communities, groups, societies, nations, supranational structures).

The concept of transformation through restoration and healing is a key point in the Zellerer, Schoeman, Hadjipavlou and Yiallourides/Anastasiadou chapters. Transformation as a dynamic and interactive process of (social) change is reflected in justice systems, crime components, communities and values from a restorative justice perspective. Relational repair is the *sine qua non* precondition of achieving transformation.

According to Sharpe's chapter, relationality in justice, in communities, in crime components, in the individuals while healing the harm or trauma and in the relational approach to rights, reflects the radical transformation of subjectivity from modern to postmodern conditions.

According to Gavrielides (Chapter 15), restorative punishment and catharsis procedures are to be found in relationships and the social liaison that binds us all. They are all components of the restorative justice philosophy discourse, an updated or 'new born' discourse in the continuum of restorative justice knowledge (or due to the Foucaultian genealogy of discourses as pointed out by Maglione in Chapter 4).

Through restorative justice's relational effects, justice in social relations achieve and operate the mechanisms for social change:

3. What we live today is the deadlock of injustice, reflected not only in traditional justice systems, but also in the current crisis environment. Colonialism, authority, power structures, and dominant discourses in social institutions, reflect the social crisis we live with nowadays in Europe and US. (Hadjipavlou, Chapter 11).

A sharp fall in human rights implementation is reflected in national and supranational institutions; human rights have grown up from the first generation to the fourth one. Cornescu (2009) argues that there are four stages in the historical

evolution of human rights: positivation, generalization, internationalization and specialization. Currently, we are at the specialization stage, meaning specialization of human rights in criminal justice systems, in communities, in middle level social institutions (such as schools) and in social and minority groups. Restorative justice aligns with that specialization focus in the levels of social reality, from international to interpersonal conflicts. Both restorative justice lenses and human rights lenses are focussed in our eyes.

According to Mackay and Yiallourides, peacemaking theory of law and restorative justice are the two faces of Janos. Institutions, social practices and communities have to recognize the different kinds of rights.

Focused on implementation of human rights and restorative justice in everyday life, most authors suggest we move our restorative justice vision from justice systems to everyday living justice (for instance see Oudshoorn, Chapter 12).

4. Restorativists are all those who share that holistic restorative justice vision and compose the restorative justice movement. Shared values and principles, such as equity and fairness, social justice and equality, human rights protection structures and humanitarian practices, are the common places – τόποι – where human rights and restorative justice meet (Artinopoulou and Gavrielides, Chapter 2)

Aristotle's theory on justice and restorative justice as a form of social justice took centre stage once more in the history of theories and ideas. Moreover, according to Schoeman (Chapter 14), pro-restorative perspectives and reimaginings of justice and fairness are brought to the forefront as demands reflect the restorative vision of world. Nevertheless, the discourses are often developed through conflict theories of law (Chapters 7, 8 and 12); surprisingly enough they align with the justice values, equity and fairness, Ubuntu philosophy and practice (Chapter 14), Aboriginal cycles (Chapter 12 and 13) and Aristotle's theory on justice (Chapter 2).

So, how do we reach *topoi* in current complex societies? The restorative justice movement lives its own formulation process. It is an open-ended question whether a global restorative justice movement is to be structured; Maglione asks what are the demands and who are the leaders. As political and social theories testify, social movements are in the process of social formulation, depending on the wider context if they succeed in putting their demands on the agenda of decision-making centres and spreading their ideology in communities, gaining supporters.

5. We need a multidisciplinary background to attain interdisciplinary approaches. Interestingly enough, and despite the multiple backgrounds of the authors, there were many coincidences in the chapter discourses that interlinked the chapters and led to a conceptualized framework of current restorative justice (Chapter 2).

Interdisciplinarity is a process of synthesis. As Editors, we learnt that a way from multi- to inter-disciplinarity exists, either as a narrow path or as a large avenue. We, all the contributors to this volume, were lucky to feel liberated enough to enjoy our journey to Ithaca (Chapter 1). Reconstruction processes are a form of interdisciplinary synthesis. However, we concentrated mostly on the process and not the final outcome, as we are detached from generalizations and holistic schemes. Finally, this discourse on the chapters' discourses contains values, practices and vision. Equity, peace, fairness, rights, relational repair and justice are the key points, the *τόποι*, where the humanitarian philosophical ways of thinking are crossed. Only the priority level changes, not the content itself.

A Different Zeitgeist

This book attempted to treat restorative justice as a form of pursuing, reaching and maintaining justice. The need to place justice and the system that delivers it within cultural, historical and societal contexts was taken as a given. Through the writing for this volume and the extant literature, we observed that there is a shift in the tectonic plates of justice; a different Zeitgeist. This observation is not attached to a particular country, continent or legal system. It relates to how you and I view, pursue, achieve and indeed want to experience justice at the inter-personal, inter-community and inter-state levels. Where the literature is thin, we listen to the stranger passing by, who is witnessing this change. This makes both our questioning and this book timely.

It is a common mistake when thinking about restorative justice to compare it with something that isn't. This comparator is an easy aid particularly since most often we resort to comparing it with what we are used to. In paradigm language, this is called our common sense.

However, in our current reality, where justice systems are forced to reconsider not only their own sub-systems¹ but also the entire framework within which they operate, our common sense is questioned. The paradigm stops fitting the facts. The chapters in this volume pointed out a number of reasons for this questioning: increasing inequalities, the uneven distribution of wealth, the power and interest battles within and outside the restorative justice movement, the increasingly stronger community voice, the world economic crisis, stronger social movements, the globalization of civic society, as well as the role of academia and research.

Aristotle and his followers explain that justice is hardly a subjective notion. It is made of ingredients that are pure and easy to identify in nature. It is the theories that have been developed to explain these ingredients that are human constructs and hence subjective. For example, for the advocates of divine command theory justice is the authoritative command of God. On the other hand, the Pythagoreans

1 For instance in the case of criminal justice systems their sub-systems are the police machinery, the prosecution, the courts, prison and the probation service.

defined justice as reciprocity, in that A shall have done to him what he has done to B or, as the Old Testament put it, ‘An eye for an eye, and a tooth for a tooth’ (Lex Talionis). Others, such as Plato, have argued that justice is in the interest of the strong (a name for whatever the powerful or cunning ruler has managed to impose on the people).² For Nietzsche, justice is part of the slave morality of the weak many, rooted in their resentment of the strong few, and intended to keep the noble man down.³ Thomas Hobbes sees justice as a collection of enforceable, authoritative rules created by the public and hence injustice is whatever those rules forbid, regardless of their relation to morality.⁴ Thinkers belonging to the social contract tradition would argue that justice is derived from the mutual agreement of everyone concerned or from what they would agree to under hypothetical conditions. These examples are only meant to be illustrative of the variations of interpretations of the norm of justice, which we have accepted to be objective.

Why would the notion of restorative justice be any different? The objectivity of restorative justice is reflected in the ‘natural objects’ that comprise it. John Stuart Mill said that mankind is always predisposed to believe that any subjective feeling is a revelation of some objective reality. In the case of restorative justice our task was to determine whether the reality, to which this feeling of justice corresponds, is one that needs any such special revelation. For the purpose of this inquiry, ‘it is practically important to consider whether the feeling itself, of justice and injustice, is *sui generis*, like our sensations of colour and taste, or a derivative feeling, formed by a combination of others’.⁵

In other words, if we were to test objectively the image of restorative justice as it is portrayed in modern society, how satisfactory would the outcome be? But what is restorative justice, and how is it reconstructed in contemporary terms? The truth is that we tend to think of restorative justice as a notion that has, or should have, a physical or conceptual existence within the real world. Some have attempted to explain its physical existence by defining it through process-based descriptions and by giving real life examples that may include practices such as mediation, conferencing, circles etc. Others have asserted that restorative justice may be more than a practice encompassing a set of principles or teachings. Therefore, they provide value-based understandings and theories that may, or may not, be susceptible to testing and empirical verification.

Here, we take a bold but firm step by stating that the past struggles of restorative justice are due to the limited vision of its proponents. We posit that restorative justice is indeed more than a series of practices or a set of values. As

2 See Plato’s *Republic*, esp. Thrasymachus.

3 Nietzsche said: ‘Justice (fairness) originates among those who are approximately equally powerful’, Nietzsche F, *Human, All Too Human*, Cambridge: CUP, 1986.

4 See, Hobbes Thomas, *The Elements of Law, Natural and Politics*, 1889, ed. F. Tönnies, including ‘Short Tract on First Principles’, 1889 (written 1630–36).

5 Mill S John, *Utilitarianism, On Liberty, Considerations on Representative Government*, London: Everyman, 1993, pp. 43–4.

we reconstruct its philosophy, we assert that restorative justice is a comprehensive set of justifications of structures, or lack of structures, for the pursuit of justice.

When making this statement, we bear two things in mind. First, that we respect what has already been developed, accepting and building on both the process-based and value-based understandings of restorative justice. As it will be argued in detail, both sets of knowledge are used in our two models of reconstructing restorative justice philosophy. Second, we are mindful not to propose anything that can exist instead of something. We are not abolitionists. All authors, including the Editors of this book, are realists with a genuine interest in unravelling the hidden dimensions of restorative justice. Again, as it will become clear, our proposition accepts the implementation of restorative justice within an integrated model of justice.

We also assert that restorative justice is not a uniform notion. Despite its objective existence, it is an evolving norm as its constituent objects are to be found in living nature. These objects are continuously moving – *τα πάντα ρεῖ και ουδέν μένει*. Therefore, restorative justice will always be accused by empirical researchers of lacking clarity. Restorative justice is a shortcut term constructed with the mentality of our busy and managerial lives. Therefore, attempts that continue to define restorative justice in the narrow sense will remain vain and out of touch with its evolving and ever changing nature. Scientists will look at water and define it as H₂O. But in the pursuit of truth, and a higher sense of knowledge, we may see water as an untamed form of nature that can take almost unlimited shapes, forms and roles. We also get to realize that it is not always good. Where it gives life it can also take it away. The definition H₂O suddenly becomes shallow and mundane.

We have used the various objects making the restorative justice justification in a collective fashion, missing what the notion is actually about. However, to identify the common attributes in this variety of objects that constitute restorative justice, it is vital that we survey their concrete nature. The chapters in this book help us do just that. We must accept, nevertheless, that a medium such as a book has its limitations and this is reflected in the number of issues exposed and the objects discussed. More symposia are needed to continue this journey.

Arguably, each legal system is based on the perceived notion of justice by the society which then entrusts its application and enforcement to legal practitioners, such as judges and lawyers. This statement leads us to assume two things; first, that there are different legal systems and second that there are different types of justice depending on national and local understandings. Although this might be true, what is undeniable is that justice has a normative concept, a universal truth.

This book is not about revealing this universal truth. It is about surveying the colours of restorative justice in the concrete and finding that final varnish we believe complements and brings out these colours in the best way.

In the preceding chapters, justice is spoken of in two ways: the lawful and the fair. The law is a human construct that is devoted to the advantage of all, or to the advantage of the best, or to the advantage of those in power, or to the advantage of

those representing it. The law commands us to act according to the mean. A well-written law follows the mean well and a poorly written law does not. On the other hand, fairness is a principle sometimes materialized through the law and the given justice system. The two are not mutually exclusive. As Aristotle put it: 'Justice in this sense, that of obedience to law, is thus co-extensive with virtue, but the terms are not identical in meaning' (Ethics). Therefore, although justice is an objective concept, it is divided into the human construct of the law and value-based fairness.

This led us to conclude that, for any analysis of restorative justice, its objective norm will be moulded into the form that we experience in a legalized justice system and that it will be delivered through bottom-up and unstructured mechanisms of fairness. Again, our interest is not in advocating for or against these two forms. Our aim is to understand them.

The preceding chapters also helped us to understand that, although we can be more demanding in terms of the representation of justice (the law), we have to remain reasonable in our expectations of the agents attempting to represent justice (the value). We would be obtuse to expect any judge or lawyer to represent the normative concept of justice (fairness). Their job description stops where justice (the law) is done. The question is, what sort of justice do we want to pursue? Put another way, what will satisfy your sense of justice post the experience of harm and conflict?

This book is not about helping you to decide whether restorative justice can lead to a better sense of justice. That is a task for its campaigners (or indeed its adversaries). Here, as modern philosophers, we try to understand restorative justice and its justification in the world of theory and practice in the hope that others, who either accuse or praise its empirical manifestation, can have a more informed discussion.

It is in human nature to hope for something better. Take the Utilitarians, for instance, who base their entire school of thought on the pursuit of utility (the ultimate good and happiness). Therefore, it should come as no surprise as to why most of our authors want to see restorative justice as a tool that can help us experience a better sense of justice. But criticism was also present, as well as some genuine attempts to construct self-assessment methodologies for our claims.

The authors were also critical of the means for delivering justice. In short, there is the informal delivery system, encompassing our day-to-day treatment and interaction with others. This is where justice is delivered informally by each one of us in our daily activities and within our communities. The second system of justice, the formal one, encompasses the justice system that has been constructed to deliver justice through the law and its institutions.

The chapters also reminded us that the individual is essentially a member of society or, as Aristotle put it, a 'social animal', whose identity is determined, but not limited, to its membership of different social groups.⁶ We cannot understand

6 However, as various libertarians would argue, although our membership of different groups (ethnic, religious, national) is influential, our identity cannot be reduced

our existence if we don't place it within the existence of others. Our world and realities are defined by our surroundings and, for those rare thinkers whose views do not conform to what is common sense, things become complex as we tend to ostracize or label them as abnormal. Therefore, a common thread running through almost all the contributions is the significance of interconnectedness and the pre-existence of a social liaison that binds us all in a social relationship.

More importantly, all contributions in this book – particularly the chapters by Zellerer, Gavrielides and Sharpe – serve as a wake-up call from the deep sleep our current justice paradigm has put us all under. The tinted lenses through which we view justice will continue to obstruct our attempts to understand and implement restorative justice. It is only after we challenge this common sense that we will be able to divert to the various modes of action and arrangement of human affairs that are classed by universal or widely spread opinion as just. This approach will help us return to the basics of restorative justice, breaking free from the Macdonaldised version of justice.⁷ Our objective here is to reconstruct the notion of restorative justice using objective tools and principles.

Restorative Justice Philosophy Reconstructed

To reconstruct restorative justice philosophy as a comprehensive set of justifications for the pursuit of justice, we first need to identify a common starting point. To pursue justice we must accept that there is an injustice, an imbalance in the *status quo*. We call this imbalance *conflict*. This can be between individuals, communities, states or even ourselves. The opposite is what Schiff, Yiallourides and Anastasiadou name in this volume as *peace*.

We have also accepted that there are two forms of justice: the lawful and the fair. Both are desirable and can co-exist. However, whereas the lawful requires a structure and a system of regulation, the fair is value-based and can be attained through loose and bottom-up methods. There is enough empirical evidence to show that restorative justice exists in both forms; the structured and unstructured – the lawful and the fair. There is no better or worse form. There is also no reason for comparing it with what isn't. Our reconstructed vision of restorative justice philosophy has a dual dimension: structured and unstructured restorative justice. So let us focus on understanding it as it is.

to membership of a single group. Each one of us is defined by a unique combination of characteristics that make up our personality.

7 See 'The McDonaldisation of a community born and community led ethos' by Gavrielides [http://www.rj4all.info/content/mcdonaldisationrestorative justice](http://www.rj4all.info/content/mcdonaldisationrestorative%20justice) (accessed February 2013)

Structured Restorative Justice

To understand the formal delivery system of justice, we only need to follow a law's journey from its conception to its delivery. To deliver justice (the law) formally, first there needs to be an injustice done to society, in this case we named it *conflict*. This needs to be identified and publicly condemned. It also needs to be backed up by a pattern of unjust behaviour. Through this, the need for regulation arises. This requires a mixture of skills and professions, including politicians, the media, academia, market research, economics, campaigners and so on. Once a law has been produced to regulate this pattern of injustice and conflict, then a further series of actors come into play to represent and deliver justice, including lawyers, courts, judges, administrators, prosecutors, prison and probation staff. Once this law is delivered, then a further chain of maintenance is observed encompassing educational institutions, the media, campaigners, politicians and so on. All these agents and institutions are engaged to contribute to the formal system of delivery and representation of justice.

Structured restorative justice is placed within this machinery and organized sub-systems of pursuing, delivering and maintaining justice after a conflict has occurred. But these institutions are not equal and the agents delivering or representing justice share various positions of power depending on their roles and place in society. This creates the power imbalances that a number of chapters in this book talked about. These power structures and imbalances are additional to those that may lead to conflict in the first place. These types of imbalances are to be found within the very machinery that is set up to address conflict and its underlying causes.

To counterbalance this distortion we have introduced legal standards. Contributors to this volume called them rights, or human rights, and placed them within both international and individual spheres. In this case, rights and human rights were understood as justiciable standards implemented by the very system that they aim to correct. They are, of course, based on our common humanity and are informed by the living experiences of those they aim to protect. But they do not have any significance until they take the form, or have the protection, of the law. Thus they must be introduced into the machinery of the structured systems and sub-systems that have been set up to address injustice and conflict.

Chart 1 illustrates how this structured way of delivering justice and restorative justice works. Within this model, conflict creates crime, offenders and victims. All three are placed within a funnel. Emptying the funnel will bring peace. Exit from the funnel can be achieved through a legalized and structured justice system that is served by structured institutions. The power imbalance that this structure creates is meant to be contained by the outside layer of the funnel which is made of human rights as they are materialized through the law. Structured restorative justice is one way of emptying the funnel and is part of many other structured forms of delivering and maintaining justice and bringing peace.

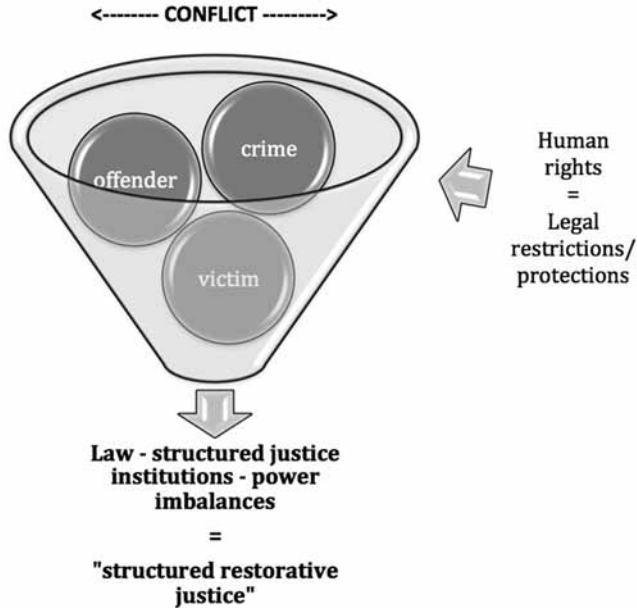


Figure 1 Structured Restorative Justice

Unstructured Restorative Justice

To understand the informal delivery of justice, we need to put conflict, our common starting point, within the context of doing harm. Conflict in the form of harm causes a broken liaison between individuals, communities, the individual and the community, the individual and the state or even between states. It also creates harmed parties independently of whether these are labelled as victims or offenders. In this model it does not matter who did what to whom. What matters is that the conflict has caused harm and a broken liaison in the pre-existent relationship of the harmed parties.

Going back to our funnel, this time it is filled with different ingredients (harm, broken social liaison and harmed parties). Again, to achieve peace we must empty the funnel. Only this time the intervention of the law will not be enough. The community must intervene and various emotions must be employed. This intervention can take various shapes and forms. Restorative justice practice may offer one such a form. Unlike in the previous funnel, loose and bottom-up mechanisms that aim to restore harm and mend broken social liaisons are used. These are not dependent on formalized sub-systems. They use localized and informal projects to bring peace.

A common feature of both funnels is the power structures that are created through the mechanisms of emptying them. These powers are not observed within

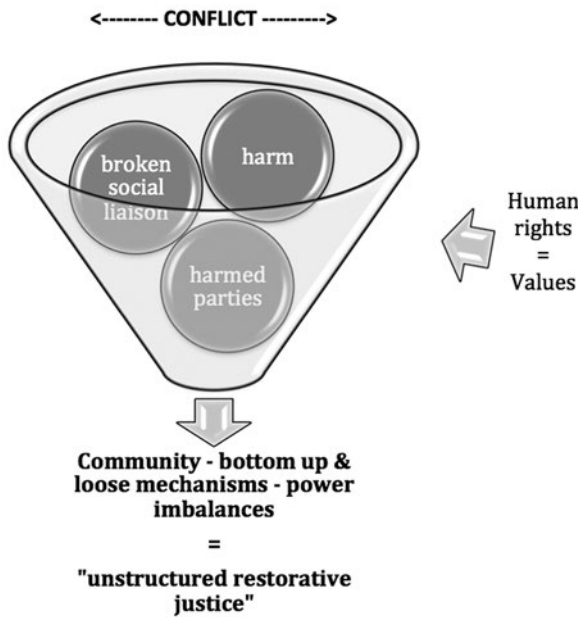


Figure 2 Unstructured Restorative Justice

and between institutions, they are created among those community representatives delivering justice. They can also be created between the harmed parties themselves as their labels and roles are removed.

Another shared denominator between the two funnels and forms of delivering justice is the role of human rights as a restraining standard. In this case, human rights are not enforced as legal restrictions but as a value-based code of behaviour and practice. Whether they are justiciable or not is irrelevant to the community-led and bottom-up structures that are called on to empty the funnel of harm, broken social liaisons and harmed parties. What these justice projects need, including unstructured restorative justice, is the manifestation of value-based guidelines. These are the set of values that we often confuse with restorative justice. This is also where the overlap between restorative justice and human rights is found, or as Artinopoulou and Gavrielides note in Chapter 2, this is the *topoi* where the two disciplines meet.

Where Do We Go From Here?

We agreed from the outset that any philosophy must be grounded in practice and be able to contribute to a better future for what it aims to understand and justify. Our

reconstructed restorative justice philosophy put the value-based and process-based understandings of restorative justice within a normative framework of justifying structured and unstructured mechanisms of delivering justice. What does this mean then for researchers, practitioners and policymakers taking an interest in restorative justice today?

The End of Definitions

There are already enough excellent papers in the literature on the definition and meaning of restorative justice (see Braithwaite and Strang, 2000; Johnstone and Van Ness, 2003; Zehr, 2003; Roche, 2001; Gavrielides, 2007, 2008; Johnstone, 2011). Therefore, our discussion purposely steered away from getting involved in yet more similar definitional arguments. Moreover, as already pointed out, trying to define water too narrowly will prevent philosophers from seeing its other properties.

In making this statement we accept the concerns that have already been expressed in the literature. There are too many to capture here, but to mention a few, a narrow understanding is necessary for the evaluation of the restorative justice practice, the setting of training and accreditation standards, the mapping and researching of its existence. Roche writes: 'In the same way that counterfeit goods may tarnish the good reputation of a manufacturers' brand label, programmes that are called restorative when they are not can tarnish the concept' (2001, p. 343). In another article Roche (2006) goes on to criticize the narrow approach that has been adopted for restorative justice claiming that it has led us to think of it only in criminal justice terms. He then lists a number of areas, including social welfare and education, corporate regulation and community governance, that can come under the umbrella of restorative justice.

We agree with Johnstone (2011) that 'there is not likely to be (indeed perhaps should not be) a single accepted conception of restorative justice. Instead, we must acknowledge the differing and indeed competing ideas about its nature' (p. 14). He makes this point again in his chapter in this volume giving the example of conferencing.

We also assert that there is no longer a need to be defensive. If a practice claims to be punitive but in fact isn't, does it need to be corrected? Why does restorative justice have to explain itself? Here we have provided a far more worthwhile justification and explanation. Our reconstructed restorative justice should also explain why Johnstone's statement matters. In other words, why and how can you define a collection of justifications of structured and unstructured ways of delivering justice? Further efforts need to be made in the theoretical understanding and development of our reconstruction as well as empirical testing of the various shapes and forms that restorative justice takes at both ends of the funnels.

The End of Abolitionism

There is general consensus in the literature that writings in the 1970s and 1980s on restorative justice presented its concept as in complete opposition to the dominant way of delivering justice, in the hope that enough attention was given to the ideas that were put forward. As we moved away from the era of experimentation and entered the times of implementation and maturity, we realize that ideas of abolishing and replacing are out of date and naïve.

There is one more reason why these discussions do not sit well with a value-based system such as restorative justice. Oudshoorn writes in this Chapter 12 about the negative impact of Colonialism and the replacement of respected Aboriginal traditions with something alien. While this statement has its merits we must be careful not to turn restorative justice into a colonial power itself. For instance, if a Western tradition is not organically prepared for restorative justice, then it should not be introduced as a more informed option deriving from a higher authority. Remember the funnel. Whether in the structured or unstructured systems of delivering justice, restorative justice forms only one of the options available for emptying the funnels. Both systems of justice put restorative justice next to other forms of justice.

A common mistake is confusing the paradigm language with abolishing what is. We have made a strong point in this book that unless we change our lenses we will not be able to view our reconstruction. This statement uses paradigm language in the sense that what is being questioned is: ‘what is common sense?’ But this does not mean that we are proposing abolishing what is. We are simply saying that there are other means of delivering justice beyond what we are used to seeing. So let’s view them for what they are without the need to remove what is. The abolitionism debate should be over.

Ending the Bottom-Up or Top-Down Divide

There can be no doubt that restorative justice is back on the agenda. Governments are becoming interested in its propositions and are trying to find ways of using it more extensively and consistently. Here is not the place to explain the reasons for this increasing interest. The literature has captured some of these factors (Gavrielides 2012a; 2012b). It has also highlighted some dangers and pitfalls that are associated with this expansion. Gavrielides (2013) and Umbreit (2001) call these dangers the Macdonaldisation of restorative justice. By using this term they want to describe the process of taking away the community heart of restorative justice and replacing it with fast food mentality of business-focused goals and readily available quick fixes.

While these fears might be justifiable, our reconstruction helps us understand that whether through a structured/top-down system or one that is bottom-up and loose, restorative justice can still deliver. Whether we end up regulating restorative justice practice through legislation or we leave it in the hands of localized and

unregulated projects it will still deliver. However, we must remember that if the structured system is applied, then restorative justice will be emptying the funnel from crime, victims and offenders. If we wish to achieve peace by emptying the funnel from harm, the broken social liaison and harmed parties, then a top-down approach, such as legislation, will not be enough. A value-based system of community trust and care must be employed. But this does not mean that one is better than the other or that the two cannot coexist. However, we do disagree that one is dependent on the other. For example, we do not need legislation in order for value-based, unstructured restorative justice to be implemented. The examples of the old bear evidence to this claim. Likewise, the cold letter of the law does not need warm hearts and value-based localized systems to deliver structured restorative justice. This can still be applied by criminal justice agents such as the police, prosecution, probation and prison staff. There are enough empirical studies bearing evidence to this claim. Enough time has been spent defending our preferred practices. After all, much of the success of restorative justice is to be found in its plurality, diversity and living nature as a continuously evolving system of justice.

Understanding Campaigning

Much energy has been spent and a number of high profile articles have been published focusing on the advantages (or indeed disadvantages) of restorative justice. Advantages tend to include higher victim satisfaction rates, reducing reoffending, cutting costs and increasing efficiency. Indeed these are the areas that government and most funders are interested in. Therefore, we would be naïve to dismiss the significance of these questions. Answering them may also help us understand the limitations or potential of the restorative justice practice. What our answers should not try to do is prove or disprove that restorative justice, whether in its structured or unstructured form, can provide a better sense of justice. It is what it is and our energy should be spent in developing its principles and practices and not in campaigning for its superiority. This is yet one more reason why campaigners and advocates of restorative justice should let its researchers and theoreticians remain objective and open to questioning. Much controversy and battles between interests have been formed within the restorative justice movement because of this reason. This should not exclude practitioners and policymakers who remain suspicious and isolated.

Getting Our Values Language Right

As argued, restorative justice is more than a set of values. What these values are has been the focus of a number of papers, including some chapters in this volume. What we have shown here is that these values are what makes the outside layer of our funnel. This layer aims to bring balance to the power battles that are to be found in the exit strategies of both of our funnels. They are not *restorative*

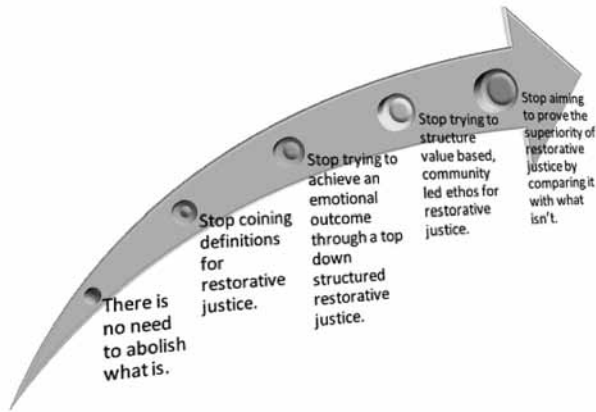


Figure 3 Moving forward: Five rules for restorative justice

justice, but a *part* of it. The relationship between restorative justice and human rights must also be put right. We agree with Braithwaite that human rights act as the restraining values in restorative practice (2000). We make a distinction, however, between human rights as legal standards that exist within a structured system of justice and those that are value-based and are to be applied within a loose methodology. The shared *topoi* where restorative justice and human rights meet was revealed and hence their respective movements can now find a common ground for further collaboration and support.

As we move forward with new research, empirical testing and theoretical development for restorative justice, we propose that we apply the following rules:

Rule 1: There is no need to abolish what is.

Variation: Focus on understanding where structured and unstructured restorative justice can help empty the funnel.

Rule 2: Stop coining definitions for restorative justice.

Variation: Focus on understanding and developing its values (protective layer) and practices (funnel exit).

Rule 3: Stop trying to achieve an emotional outcome through a top-down structured restorative justice.

Variation: Crime, victims and offenders are legal constructs of a structured system of justice and should be treated as such.

Rule 4: Stop trying to structure value-based, community-led ethos for restorative justice.

Variation: Harm, the broken social liaison and harmed parties should be served through relational approaches that are motivated by values and the community.

Rule 5: Stop aiming to prove the superiority of restorative justice by comparing it with what isn't.

Variation: Evaluation and empirical studies should focus on the question ‘what happened’ and not ‘what works’.

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